

“THE ABANDONED MINE LANDS PROGRAM”

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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OVERSIGHT HEARING ON “THE ABANDONED MINE LANDS PROGRAM”

**Thursday, July 24, 2003
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to call, at 2:05 p.m., in room 1334, Longworth House Office Building, Hon. Barbara Cubin, [Chairman of the Subcommittee] presiding.

Present: Representatives Cubin, Rahall and Neugebauer.

Mrs. CUBIN. The oversight hearing by the Subcommittee on Energy and Mineral Resources will come to order. This Subcommittee is meeting today to hear testimony on the Abandoned Mine Lands Act. Under Committee Rule 4(g) the Chairman and the Ranking Minority Member can make opening statements, and then if any other members come, they can have their statements included in the record.

STATEMENT OF THE HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. The Subcommittee meets today to focus on problems within the Abandoned Mine Lands Program. When Congress passed the Surface Mining Control and Reclamation Act of 1977, or SMCRA, it recognized that the Federal Government had an obligation to clean up years of lax regulation of coal mining operations and direct the reclamation of abandoned coal mines around the Nation.

To fund this reclamation effort it established a fee on coal production, to be collected by the Office of Surface Mining, in the amount of 35 cents per ton for surface mined coal, 15 cents per ton for underground mined coal, and 10 cents per ton of lignite. In 1977, western coal mines were just beginning to establish themselves, and western politicians wanted to ensure that a portion of the AML fees went back to the states from which they were collected.

A compromise was reached by which 50 percent of the share would be returned to the state of origin and the other 50 percent would be disbursed by the Federal Government based on historic

coal production and other Federal priorities. Oh, how I wish that were the case today.

Almost \$6 billion has been collected for the program since its inception, with just about \$3.2 billion of that intended for reclamation projects. The program was initially meant to take only about 12 years to complete, but despite the enormous amount of money that has already been collected, it is estimated that it will take at least an additional \$6 billion and anywhere from 12 to 100 years to complete work on priority one and priority two sites.

As we look to authorize the AML program, we must ensure that our cleanup efforts are reasonable and efficient so that we don't just keep throwing good money after bad.

The largest problem we face is that the money being collected is not being appropriated back to the states and to the AML program as it should be. The original 1977 statute made a commitment that half of the money would be returned to the states from where they were collected.

The House and Senate appropriators have not been applying the funds to the states nor to the projects that need to be funded. In fact, a little over half of the funds are being appropriated. Year after year Congress has failed to live up to its promises and states like Wyoming and West Virginia are suffering the consequences.

Wyoming's unappropriated State balance alone is now \$375 million, and the total unappropriated State balance nationwide is as high as \$971 million. This is a huge sum of money that could be put to legitimate reclamation needs.

As we look to reauthorize this program we need to find a solution to this appropriations problem, and compel Congress and the administration to live up to their commitments and return the 50 percent state share balances to the states where they were collected.

When the AML fund was first started the vast majority of coal production was in the east where most of the reclamation work now needs to be done. Over the past couple of decades though, coal production has migrated west. Wyoming-mined coal currently pays for over 40 percent of the entire AML program. Wyoming money is being used to clean up eastern problems. Future funding of the AML program must ensure that one region of the country does not pay for a disproportionate share of the reclamation work from another region and from a different era.

Further, the law was amended in 1992 to use a portion of the interest earned by the AML fund to support the combined benefits fund that pays for unassigned beneficiaries or retired mine workers whose former companies are no longer in business and no longer pay for their health care premiums.

Rising prescription drug costs, lower interest rates and an increasing pool of unassigned beneficiaries are stretching the combined benefits fund to its limits. We need to address how we can continue to adequately fund the health care benefits of these retired mine workers. That is something we must do.

I know many of you here today have a strong interest in this area, and I believe I speak for the entire Subcommittee when I say that we are going to do our very best to find a solution to this portion of the problem.

I believe the CBF obligation and our debt to those workers who toiled in the mines and mills and helped us power to victory in World War II and beyond is a national responsibility, not one that should be heaped upon the shoulders of Wyoming and a limited number of other coal-producing states. If it is a national problem, it needs a national solution, not one that is supported by the AML fund alone.

I also believe that we can bring additional money into the system through the issuance of Government backed bonds, as Mr. Kanjorski has proposed in his bill, which I have signed on as a co-sponsor. Not only do we need to repay the states for the money that they have paid into the fund, we also ought to provide them with additional tools to address their health and environment concerns.

We have before us today representatives of the broad stakeholder interest in the AML fund. We will hear many different perspectives and priorities about reauthorization of SMCRA. I want us to take in each of these perspectives and begin to build a consensus on some key issues regarding reauthorization. This is a very complex and often contentious issue, but it is an issue that is important to all of us, and we owe the American people a rational and common-sense solution.

Reauthorization of the AML fund should be about keeping promises. We need to keep our promises to the retired mine workers so that their health benefits are secure. We need to keep our promises to those regions of the country that have been promised reclamation of their abandoned coal mine sites, and we need to keep our promise to the states that have paid into the AML fund.

I look forward to working with Mr. Rahall and other members of the minority, with the administration, the states, and all of the various stakeholders to find a solution that is good for the Nation, good for our environment, and keeps our promises to the American people.

Finally, I would like to welcome Marion Loomis, who is President of the Wyoming Mining Association, as well as John Masterson, counsel to Governor Freudenthal of Wyoming. They both do a good job for our home State. Mr. Loomis has been working with me since I was in the State legislature and we have been friends for a long time. I look forward to hearing from them on this issue.

I would like to welcome all of our witnesses today, and I look forward to hearing their testimony.

[The prepared statement of Mrs. Cubin follows:]

**Statement of The Honorable Barbara Cubin, Chairman,
Subcommittee on Energy and Mineral Resources**

The Subcommittee meets today to focus on problems within the Abandoned Mine Land Program. When Congress passed the Surface Mining Control & Reclamation Act of 1977, or SMCRA, it recognized that the Federal Government had an obligation to clean up years of lax regulation of coal mining operations and direct the reclamation of abandoned coal mines around the nation.

To fund this reclamation effort it established a fee on coal production, to be collected by the Office of Surface Mining, in the amount of 35 cents for per ton for surface mined coal, 15 cents per ton for underground mined coal, and 10 cents per ton of lignite. In 1977, western coal mines were just beginning to establish themselves and western politicians wanted to ensure that a portion of the AML fees went back to the states from which they were collected.

A compromise was reached by which 50 percent of the share would be returned to the state of origin, and the other 50 percent would be disbursed by the Federal Government based on historic coal production and other Federal priorities. Oh, how I wish that was the case today.

Almost \$6 billion has been collected for the program since its inception, with about \$3.2 billion of that intended for reclamation projects. The program was initially meant to take only about 12 years to complete. But, despite the enormous amount of money already collected, it is estimated that it will take at least an additional \$6 billion and anywhere from 12 to 100 years to complete work on priority one and two sites.

As we look to re-authorize the AML program, we must ensure that our clean up efforts are reasonable and efficient so that we don't just keep throwing good money after bad.

The largest problem we face is that the money being collected is not being appropriated back to the states and to the AML program as it should be. The original 1977 statute made a commitment that half of the money would be returned to the states from where they were collected.

The House and Senate Appropriators have not been applying the funds to the states nor to the projects that need to be funded. In fact, little over half of the funds are being appropriated. Year after year, Congress has failed to live up to its promises, and states like Wyoming are suffering the consequences.

Wyoming's unappropriated state balance alone is now \$375 million dollars and the total unappropriated state balance nationwide is as high as \$971 million. This is a huge sum of money that could be put to legitimate reclamation needs.

As we look to re-authorize this program, we need to find a solution to this appropriations problem and compel the Congress and Administration live up to their commitments to return the 50% state share balances to the states where they were collected.

When the AML program was started, the vast majority of coal production was in the East where most of the reclamation work needs to be done. Over the past couple of decades, though, coal production has migrated West. Wyoming mined coal currently pays for over 40% of the AML program. Wyoming money is being used to clean up Eastern problems. Future funding of the AML program must ensure that one region of the country does not pay for a disproportionate share of the reclamation work in another region from a different era.

Further, the law was amended in 1992 to use a portion of the interest earned by the AML fund to support the Combined Benefits Fund that pays for unassigned beneficiaries—retired mineworkers whose former companies are no longer in business and no longer pay for their health care premiums.

Rising prescription drug costs, lower interest rates and an increasing pool of unassigned beneficiaries are stretching the Combined Benefits Fund to its limits. We need to address how we can continue to adequately fund the health care benefits of these retired mine workers. I know many of you are here today have a strong interest in this area, and I believe I speak for the entire Subcommittee when I say that we are going to do our best to find a solution to this portion of the problem.

I believe the CBF obligation and our debt to those workers who toiled in the mines and mills and helped power us to victory in World War II and beyond is a national responsibility, not one that should be heaped upon the shoulders of Wyoming and a limited number of other coal-producing states. If it's a national problem it needs a national solution, not one supported by the AML fund alone.

I also believe that we can bring additional money into the system through the issuance of government-backed bonds as Mr. Kanjorski has proposed in his bill, which I have signed on to as a co-sponsor. Not only do we need to repay states for the money they paid into the fund, we also ought to provide them with additional tools to address their health and environmental concerns.

We have before us today representatives of the broad stakeholder interests in the AML fund. We will hear many different perspectives and priorities about re-authorization of SMCRA. I want us to take in each of these perspectives and begin to build consensus on some key issues regarding re-authorization. This is a very complex and often contentious issue, but it is an issue that is important to all of us and we owe the American people a rational and common-sense solution.

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I look forward to working with Mr. Rahall, with other members of the minority, with the Administration, the states and all of the various stakeholders to find a so-

lution that is good for the Nation, good for our environment and keeps our promises to the American people.

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I would also like to welcome all our witnesses testimony today, and look forward to hearing their testimony.

Mrs. CUBIN. I ask unanimous consent that the gentleman from Texas, Mr. Neugebauer be allowed to participate in the hearing today. Is there any objection?

Hearing none, so ordered, and you may be seated at the dais.

I would like to recognize Mr. Rahall for his opening comments.

**STATEMENT OF THE HON. NICK J. RAHALL, II, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
WEST VIRGINIA**

Mr. RAHALL. Thank you, Madam Chair. I appreciate very much your having this hearing today.

In regard to your opening comments, there was very little if anything with which I disagreed, and I found it to be rewarding to work with you over a number of years, not only on this issue but a number of issues that have come before our Resources Committee, and this is a challenge that is before us. We shall meet this challenge and continue to resolve it, try to resolve it in an equitable fashion and in a way that you said so very well, keeps a promise to our coal miners and keeps a promise to the coal fields of this Nation.

This is an important program, the Abandoned Mine Reclamation Program. It is one which I played a small role in devising and in nurturing these long years since 1977. That was my first year in Congress. This particular legislation was the first legislation upon which I served on a Conference Committee in my tenure in this body. It was there that hot August day, August 4th, 1977 in the Rose Garden of the White House, standing behind Jimmy Carter when he signed this legislation into law, with both industry and environmentalists in attendance for that bill-signing ceremony.

This hearing I am sure will involve discussions involving statistics, formulas and investment strategies, which is all fine and appropriate, but I fear we may be missing the real point.

Many years ago it struck me what the issue is really about, and that is the courage, the conviction of the people of the Appalachian region and indeed those in our coal fields throughout this great Nation. It is about the sacrifices made by our people and of our land in an effort to produce the coal which ignited the industrial revolution, made this Nation the great superpower that it is, and which today fires the technological revolution by being the fuel which generates over one half of our electricity.

But make no mistake about it, with that coal production came a legacy, a legacy of shattered landscapes and shattered lives. Restitution, I would submit, must be made. The wrongs of the past have begun to be corrected, but the job is by no means completed.

Today then, with the same conviction as we embarked upon in the aftermath of the Buffalo Creek disaster in '72, I join those who

call upon this Congress to fulfill the promise made in that landmark '77 legislation to reclaim Appalachia, to restore her lands and waters and to bring them back to productive uses by reauthorizing the Abandoned Mine Reclamation program, to reclaim those shattered landscapes, many of which pose a threat to human health and safety.

Today then, with the same conviction a former generation showed in places like Blair Mountain in 1921 or more modern times such as the 1989 labor dispute with Pittston Coal in the Virginia and West Virginia coal fields, with that same conviction I join those who call upon this Congress to keep the promise made by the Federal Government to our Nation's coal miners by moving upon remedial legislation to salvage the health care of some 50,000 retired coal miners and their dependents, to reclaim lives, many of which have been shattered by Black Lung Disease, now that they are in their hour of need. This is the restitution about which I speak.

We as a Nation owe it to them to move on legislation to finish the job of reclaiming all remaining high-priority abandoned coal mine sites, and we owe it to them not to abandon the coal miner while engaged in that pursuit. The eyes of the coal field communities and coal mining families are upon us this day.

So to this gentleman from West Virginia this is a matter of justice. It is a matter of human dignity. It is a matter of respect. It is one which I shall never flag nor fail in efforts to accomplish.

I appreciate your help in this effort, Madam Chair. Thank you.

Mrs. CUBIN. Thank you, Mr. Rahall. Certainly we share the same goals in our efforts here.

You heard the buzzers go off. Unfortunately, we have a series of votes that will last about 2 hours. I really regret that. The best that we can do I think is just go ahead and recess now. Mr. Holden and Mr. Kanjorski, do you want to go ahead and do your 5 minutes testimony or would you rather come back?

Mr. KANJORSKI. I would rather come back.

Mrs. CUBIN. All right.

Mr. HOLDEN. Madam Chairwoman, if I could briefly summarize my testimony, because I have a Conference Committee meeting in 2 hours when you are going to reconvene.

Mrs. CUBIN. That would be great. The Chair recognizes Mr. Holden.

STATEMENT OF HON. TIM HOLDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. HOLDEN. Thank you, Madam Chairwoman and Mr. Rahall. Thank you for allowing me to participate in this hearing today and to testify about this problem that we are facing in many areas across the country, our abandoned mine land reclamation.

Madam Chairwoman, as you mentioned, and Mr. Rahall mentioned in your opening remarks, this is a problem that needs to be addressed, that the formula is flawed, that the appropriators are not using the funds for its intended purposes and that is true in many areas of the country, but it is certainly true in the Commonwealth of Pennsylvania.

The Commonwealth of Pennsylvania has a several billion dollar problem with abandoned mine reclamation and acid mine drainage that is strangling our ability to clean up our environment and to attract industry into the coal regions of Pennsylvania, particularly the anthracite coal regions of Pennsylvania, where Mr. Kanjorski and I are proud to reside and to represent the good hard-working descendants of the people who really worked to fuel the industrial revolution in this country and to give us the resources to win World War II.

As a result, Madam Chairwoman, as you mentioned in your opening remarks, in the last several decades the production of coal in this country, whether you get the resources or whether the Federal Government gets the resources to address this problem, has shifted to the west, and as a result of that, our production is at an all-time low, and based on a formula, that is not being administered that Congress intended since 1977, and based on the lower production that has occurred in the anthracite coal fields, we are faced with a situation where we have over a billion dollars in problem areas that need to be cleaned up. The Commonwealth of Pennsylvania received approximately \$25 million a year from the fund. The anthracite region receives about 25 percent of that. You do not have to be a graduate of the Wharton School to figure out how long it would take to clean up the abandoned mine problems that we face in the anthracite coal region.

I realize that balance needs to be worked out here, that the west, particularly Wyoming, is doing an awful lot of the production right now, as you mentioned, Madam Chairwoman, 40 percent. But those of us feel that we paid the price and that our ancestors paid the price, and we are left with the scars.

So as we move forward on this problem, we hope that you realize there needs to be balance, and that those of us in Pennsylvania and West Virginia, Kentucky, and Southern Illinois, we have problems too that need to be addressed. We look forward to working with you to try to find a balanced solution.

My good friend and colleague, Mr. Kanjorski, has a plan that he has proposed and introduced, which I support, and I will allow him to elaborate on when you reconvene in a few hours, that talks about a bonding issue that might be a way to find a solution to this to be balanced and fair. I know, Madam Chairwoman, you and Mr. Rahall will take a very close look at that, and I thank you for doing that.

Finally, as Mr. Rahall said in his opening remarks, we must not also be concerned with abandoned mine lands. We cannot abandon our miners. This Committee and this Congress, particularly through the leadership of Mr. Rahall, has stepped up to the plate and addressed the health and welfare needs of miners, particularly in the bituminous fields of this country, and I applaud their efforts.

But those of us who represent the anthracite fields also have a concern that we ask you to consider. Our pension funds for the anthracite regions are all but in default. Our coal miners have seen their pensions go from \$90 a month, which is nothing, to \$30 a month that they receive in their pension plan. This is something that is underfunded. The production in the anthracite field is at an all-time low, as I mentioned. A compromise that could be worked

out with industry and with United Mine Workers seems to be not achievable because of the low production. So I ask again, as you review not only the abandoned mine land issue, that when you review what needs to be done with the health and welfare, you take an opportunity to look at the serious problem that the anthracite coal miners are facing, the retirees, when they have their pensions reduced to \$30 a month.

I thank you for the opportunity to present this testimony.

[The prepared statement of Mr. Holden follows:]

**Statement of The Honorable Tim Holden, a Representative in Congress
from the State of Pennsylvania**

Thank you Ms. Chairman, members of the Committee for holding this hearing today. I appreciate the opportunity to testify about the importance of the abandoned mine reclamation fund. This fund is the major source of Federal funding for mine reclamation, and while it's important we reauthorize it, we must also correct the imbalanced distribution of funds back to the states.

Since 1977, the fund has helped improve the quality of life in and around the coal regions. The Surface Mining Control and Reclamation Act (SMCRA) created the Abandoned Mine Reclamation Fund and granted the Office of Surface Mining (OSM) the authority to collect fees. Income to the fund is generated by today's mine operators on every ton of coal they mine—ranging from 10 to 35 cents a ton. The program has collected almost \$7 billion over the past 26 years. Pennsylvania receives an average \$25 million each year to address a \$4.6 billion problem; over \$1 billion alone is needed for the anthracite region. At that rate, it will take 200 years to fix the most serious problems.

We have successfully used the fund to clean up toxic mine water, put out mine fires, and eliminate other abandoned mine hazards, but much work remains to be done. The primary goal of the program was to fund projects on a priority basis; however, the current formula holds us back from doing so. Almost 80% of at risk areas have not been safeguarded. The main problem is the majority of grants distributed to states are based on current rather than historic production; those who produce the most coal are receiving the most money. When the program began in 1977 that seemed fair to most Eastern states since production was high enough to guarantee that states would receive enough money to tackle abandoned mine problems. However, coal production has rapidly shifted westward leaving approximately 94% of abandoned mine problems behind.

Pennsylvania has produced more coal than any other state and consequently, is home to 1,700 abandoned mines. Statewide, these mines encompass more than 189,000 acres, are distributed in 10 of 19 congressional districts, 44 out of 67 counties, and in 1/5 of our municipalities. In my district alone, Schuylkill and Dauphin counties total nearly 25,000 acres. There are 47 coal fires in the state (17 in the anthracite region) and over 3,100 miles of stream affected by abandoned mine drainage. To date Pennsylvania has received \$587million of which \$275 million has been spent in our anthracite district- we have some fundamental problems with the way this formula is written.

Reauthorization presents us with an opportunity to get back to the objective—reduce the health and safety hazards posed by abandoned mines. We should adjust how the fee is collected and direct resources to where the problems are. Right now there is unspent funds in the trust and some of the money allocated to states is being used for projects other than coal.

Much has changed in past 25 years and the current structure is no longer capable of moving us in the right direction. Reclaiming our abandoned mine legacy requires multiple tools. My colleague, Representative Kanjorski has been working on this issue for some time and has introduced H.R. 419 to move us forward. Similarly, Pennsylvania taxpayers have been doing their share to help shoulder the burden of cleaning up our abandoned mine lands. But we cannot do it alone.

Public health and welfare, restoration of the land, and cleaning of polluted streams requires modification and reauthorization of the program. At the same time, we need to ensure that funds can continue to be used to address the problem of abandoned mine drainage. Failure to act keeps us from achieving total program success.

Mrs. CUBIN. Thank you, Congressman Holden. I don't disagree with you that your ancestors suffered a lot and gave a lot, and this problem is a national problem, and it requires a national solution. In saying that, I just feel that one State shouldn't bear 40 percent of a national solution, and absolutely this Subcommittee won't pass out any legislation that doesn't take care of the retired miners and their benefits.

I don't have any questions for Mr. Holden.

Mr. Rahall?

Mr. RAHALL. No questions, Madam Chair. I understand Mr. Kanjorski wants to come back.

Mr. KANJORSKI. I could give my statement now.

Mrs. CUBIN. That would be great.

**STATEMENT OF HON. PAUL KANJORSKI, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. KANJORSKI. Madam Chairman and Mr. Rahall, my good friend, I am not going to go over a lot of what Tim has talked about.

Pennsylvania has a particular problem. It has 250,000 acres of mine-scarred land. It has 100 million cubic feet of burning coal refuse, and it has 3,000 miles of contaminated streams. The problem in Pennsylvania is represented in 44 of the 67 counties, or two-thirds of the Commonwealth have these problems.

To date we have had reclamation work, and the abandoned mine program has helped, but in a State the size with the proportions and the problems that we have, it is anticipated that even if all the funds received were paid out on the proportions they are presently allocated, it would take more than 200 years to meet the priority one and priority two problems. I am an optimist, but I do not think we are going to be around that long, and I am sure we are going to lose the great assistance of Mr. Rahall sometime during that 200-year period.

So what I have looked at is that we really cannot authorize funds that long and provide appropriation that long.

What we should do is step back and look at this as a national problem. It affects 126 congressional districts in the United States. It is literally millions of acres of land and problems and streams that are polluted. Rather than trying to put this on the back of the existing coal mining industry, a good portion of which comes from Madam Chairman's State; these companies had nothing to do with this—they were not even in business when our problems existed pre to 1977. Then the next solution could be, should we look at the people in those locales to do something about it?

The fact of the matter is most of this devastation goes back generations, and the existing populations of these areas, one, are used to them; they don't really see the deterioration and the ravages; two, they have never gained anything from them; if you will study the population dynamics of the area you will find that they are generally an elderly population area, heavily senior citizens, who, the last thing that they need is a local tax burden to try and solve a problem. So it is not going to be done on a local level.

On a State level, it is bifurcated insofar as major population centers such as Philadelphia, Pittsburgh in Pennsylvania, have very

little identity with the coal fields of Pennsylvania and can put blinders on, and I think that is true to a lot of coal-mining States.

So what I did is I accepted the proposition that Mr. Holden made, that this was to fuel the American industrial revolution and the energy this country needed. That is why we suffer these ravages which are sins of more than a century. It should take the entire base of the United States to help pay for the problem. Now, we are not going to get that in authorization or appropriated funds, but we can accomplish it if we pass a bill which authorizes tax credits to be sold on tax credit bonds to the existing market, that in lieu of paying interest on the bond issue, the buyer of the bond issue would have the right to take a tax deduction.

By doing that we could assemble a fund of money over the next 30 years of more than \$20 billion—

Mrs. CUBIN. Mr. Kanjorski, would you mind coming back, because I do have a series of questions that I would like to ask you about your bonding proposal?

Mr. KANJORSKI. Absolutely.

Mrs. CUBIN. Have you completed enough testimony that we can go vote now?

Mr. KANJORSKI. We can now.

Mrs. CUBIN. Because I really do have some questions.

Mr. KANJORSKI. Very good.

[The prepared statement of Mr. Kanjorski follows:]

Statement of The Honorable Paul E. Kanjorski, a Representative in Congress from the State of Pennsylvania

Ms. Chairwoman, I welcome this opportunity to testify before you on an issue that has long been of particular concern to me and to the citizens of Pennsylvania whom I represent: reclamation of abandoned mine lands.

Pennsylvania has historically been one of the country's largest coal producing states. Coal mined in Pennsylvania fueled the industrial revolution and two world wars. However, much of this mining was done prior to 1977 when the Surface Mining Control and Reclamation Act was passed. Especially in the anthracite region of eastern Pennsylvania, most of these coal mines are no longer producing and the companies that mined the land are long gone.

As a result, Pennsylvania has over 250,000 acres of abandoned mine lands, 100 million cubic feet of burning coal refuse and 2,500 miles of contaminated streams and rivers. These problems affect 36 of Pennsylvania's 67 counties. Pennsylvania's Department of Environmental Protection (DEP) estimates that it would cost approximately \$4.6 billion to reclaim Pennsylvania's Priority 1 and Priority 2 sites. Priority 1 areas are those that pose an extreme threat to the health and safety of residents and Priority 2 sites are those which may have adverse effects on public health, safety and general welfare. In addition, DEP estimates it would cost \$15 billion to clean up all of Pennsylvania's abandoned mine lands and to clean all of Pennsylvania's contaminated waterways.

Areas suffering from abandoned mine problems are often economically depressed. These environmental problems retard development because companies are hesitant to move into locations where black culm banks consisting of coal waste litter the area and streams run orange with the mineral discharge from the abandoned mines. Instead, pristine lands are developed, often at the expense of conservation efforts or recreational needs, rather than degraded sites, many of which are often located in population center with extensive infrastructure likes roads and sewers in place. The continued presence of devastated land negatively impacts a community's attractiveness and viability, decreases nearby property values, and prevents the development of the community's tax base. Economic development leaders in my district tell me that often, corporate executives have considered moving into my district but after seeing the nearby mine lands, they instead choose to move into areas with fewer environmental problems.

In addition, these former mine lands are safety hazards. Currently, there are 47 mine fires burning in Pennsylvania. Just last week I learned of a surface mine fire

in my district that was started when a culm bank caught fire from a burning trash pile. This is most unfortunate because many of these fires could be prevented if proper reclamation activities were undertaken.

Beyond the environmental concerns, failure to address this devastation amounts to a public health problem. For instance, the Office of Surface Mining (OSM) estimates that in Pennsylvania alone over 1.6 million people are potentially at risk from mine hazards. OSM defines a person as being at risk if they reside within one mile of a Priority 1 or Priority 2 site. Every year dozens of people are either injured or killed by exploring or playing in abandoned mines. By reclaiming these abandoned mines, many of these accidents could be prevented.

Unfortunately, an appropriate amount of funding is not being allocated for the purpose of reclaiming these mine lands and contaminated waters. Currently, the Abandoned Mine Land program is the only source of Federal money available for reclaiming abandoned mine lands. While the AML Fund provides much-needed resources for redeveloping devastated coal mining land areas, these funds have proven inadequate to address the huge amount of health, safety and environmental problems of abandoned mine land areas.

The AML fund generally only addresses Priority 1 and Priority 2 problems. In addition, the AML fund only cleans the areas to the point where they are no longer a health and safety threat. The program does not restore the land to the point where it can be reused for development purposes.

In 2002, Pennsylvania only received \$24.7 million from the Abandoned Mine Land Fund. With the current rate at which the AML program is working, it is estimated that it will take over 200 years for all of the nation's abandoned coal land areas and contaminated streams and rivers to be reclaimed. Areas affected by mine-scarred lands cannot afford to wait that long.

That is why I introduced the Abandoned Mine Land Area Redevelopment Act earlier this year. This bill, H.R. 419, would create special tax credit bonds for the reclamation of abandoned mine lands. These bonds, entitled "Qualified Abandoned Mine Land Area Redevelopment Bonds," are similar in structure to the Qualified Zone Academy Bonds enacted in 1997 for school construction.

The tax credit system established by this legislation would enable regional organizations, non-profit organizations, or state and local governments to create a comprehensive plan for reclamation and redevelopment of an abandoned mine land area. The interested party would then submit the plan to EPA for approval. Upon approval, the organization would issue a bond to a qualified purchaser who would receive a tax credit in lieu of interest. A portion of the proceeds of the sale of the bond would be put into a sinking fund. At the end of thirty years, the term of the bond would be fulfilled and would be returned to the purchaser. The remainder of the proceeds from the sale of the bonds would then be used to implement a comprehensive reclamation and redevelopment plan.

According to the Joint Committee on Taxation, the estimated cost of the legislation for the first ten years is \$7 billion. This cost represents the amount in lost revenue to the Federal Government. Therefore, at a cost of less than \$1 billion per year we could reclaim all of the abandoned mine lands in the country. This proposed system would allow communities afflicted by abandoned coal lands to design, undertake and oversee their specific clean up efforts without reliance on Federal appropriations and direction from government officials completely removed from the region and the problem.

In my district, a local non-profit organization, the Earth Conservancy, provides a blueprint for other community organizations interested in undertaking reclamation projects. The Earth Conservancy was created for the purpose of purchasing and reclaiming about 17,000 acres of former coal land. The organization hired a world-class planner to help design their reclamation plan and created a 40-person board with representatives from the community, including business, environmental and tourism leaders. The organization held monthly public meetings for a year to gain insight and input from the community to determine the best uses for the land. Finally, the Earth Conservancy completed their plan, which included keeping two-thirds of the land as green space. To date, the Earth Conservancy has reclaimed over 800 acres of abandoned mine land.

My bill would complement the current AML program by empowering communities to manage their own reclamation efforts with more flexible dollars which could be used to reclaim the degraded land and water which does not meet the stringent requirements of Priority 1 and 2 classification. The assurance of guaranteed long-term funds allows more comprehensive reclamation so that regions can be remediated holistically.

This program would spur economic development in America's coal regions by making more land ready each year for reuse and development. That is why the National

Association of Realtors and the Appraisal Institute recently sent me a letter in support of this legislation. The National Association of Realtors (NAR) and the Appraisal Institute support this bill because the clean up of old mine sites is crucial to the growth of the nearby communities. In addition, they recognize that the clean up activities themselves will provide jobs in areas where new opportunity is needed. As you may know, the National Association of Realtors has been instrumental in advocating important economic development legislation and I appreciate their support of this matter.

Therefore, because of this proposal's potential to address problems of environmental degradation due to mining practices, I urge the Committee to consider including my legislation in the overall reauthorization of the Surface Mining Control and Redevelopment Act (SMCRA). I feel that by including this language, the goal of reclaiming our Nation's abandoned coal lands and cleaning the resulting contaminated waterways can be met in this generation. It is important that these areas be cleaned now so that the future generations are not affected by this environmental degradation.

In addition, I encourage the Committee to keep the needs of Pennsylvania in mind when reauthorizing this bill to ensure that the areas that fueled our Nation's industrial revolution continue to receive a fair amount of funding from the AML Fund. I also urge the Committee to consider ways to ensure that a larger portion of the fund is used for reclamation of these areas and less is lost due to administrative fees.

Finally, I encourage the Committee to consider the comments from the Secretary of the Pennsylvania Department of Environmental Protection. I am submitting into the record her letter that outlines the needs of Pennsylvania and the steps which should be taken in reauthorization of the Surface Mining Control and Reclamation Act.

Thank you for the opportunity to testify and I appreciate your consideration of my remarks.

[Letters submitted for the record by Mr. Kanjorski follow:]



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

July 22, 2003

Secretary

717-787-2814

The Honorable Barbara Cubin
U.S. House of Representatives
1114 Longworth House Office Building
15 Independence Avenue, S.E.
Washington, DC 20515

Dear Representative Cubin:

I am writing to bring to your attention Pennsylvania's strong support for reauthorization of fee collections mandated by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). As the Subcommittee on Energy and Mineral Resources considers the status of the abandoned mine land (AML) program and its reauthorization, it is helpful to remind ourselves of one of the important purposes of SMCRA, that is, "*to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this Act and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.*" We are a long way from completing that task in Pennsylvania. Although progress has been made, our citizens continue to be exposed to health and safety risks such as dangerous highwalls, hazardous water bodies, subsidence, underground mine fires and polluted water. As recently as last week we were reminded of the urgency of our task as a fatality was reported at an abandoned mine land location in the Wilkes-Barre area, part of Congressman Kanjorski's district. Reauthorization of fee collection, in conjunction with Congressman Kanjorski's proposal for a tax credit bond issue, would significantly advance Pennsylvania's ability to deal with this legacy.

The estimated cost to correct the Priority 1 and 2 problems reported in Pennsylvania's inventory of abandoned mine land problems is \$4.6 billion, including \$3.6 billion of water-related problems. We believe that the following steps should be taken:

- Continue to collect fees at current levels.
- Restructure the funding formula so that funds are allocated in proportion to the incidence of Priority 1 and 2 problems.
- Eliminate the Rural Abandoned Mine Program (RAMP) and allocate the funds released using the restructured funding formula.

The Honorable Barbara Cubin

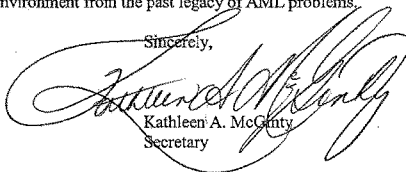
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July 22, 2003

- Reauthorize SMCRA for a period sufficient to ensure that reclamation of abandoned mine lands is completed.
- Increase annual funding levels by distributing all revenue collected without the need for appropriation.
- Continue the authority for the 10% set aside program for acid mine drainage remediation.
- Eliminate SMCRA's lien requirements. SMCRA requires that a lien be placed on any property where the value is increased beyond specified limits as a result of reclamation done on the site. Pennsylvania conducts hundreds of appraisals every year and has incurred hundreds of thousands of dollars in salary costs since 1996 to satisfy this requirement. However, for the same period, only one lien has been filed, and \$40,000 was recovered.
- Provide the ability to leverage the use of Title IV funds to maximize reclamation.
- Streamline other federal requirements to reduce costs for mine reclamation.

I urge you to support the items listed above as a means to complete the reclamation of the high priority AML coal problems that still face this nation. This will allow Pennsylvania to protect its citizens and the environment from the past legacy of AML problems.

Sincerely,



Kathleen A. McGinty
Secretary

cc: Congressman Paul Kanjorski

*Hope you are well. Would welcome
a chance to visit and talk about
this -- a top priority for Pennsylvanians!*
Kan

July 23, 2003

The Honorable Paul Kanjorski
US House of Representatives
Washington, DC 20515

Dear Congressman Kanjorski:

On behalf of more than 900,000 members of the NATIONAL ASSOCIATION OF REALTORS® and the members of the Appraisal Institute, we wish to express support for your bill H.R. 419, the Abandoned Mine Land Area Redevelopment Act. Your bill provides an efficient, cost-effective way to reclaim and improve land near abandoned coal mines.

The NATIONAL ASSOCIATION OF REALTORS® (NAR) and the Appraisal Institute have long supported tax incentives for the clean up of environmentally damaged land. In recent years, we have supported deductions for brownfield clean up expenses and will work to have that provision extended before it expires at yearend.

Tax incentives are an efficient private sector means of drawing capital to environmental enhancement endeavors. The clean up of old mine sites is crucial to the growth of the nearby communities. The clean up activities themselves will provide jobs in areas where new opportunity is needed. The clean up will increase the chances for new investment, as well.

Tax credit bonds require minimal government outlays to achieve the goals of both society and the government for a cleaner environment. Investors will receive tax reductions in lieu of interest. The proceeds of the bonds will be used in the private sector to finance projects. This capital stream will flow steadily and reliably, so that over time both the entities doing the clean up and the communities will benefit.

We are hopeful that this legislation can be passed in this session of Congress.

Sincerely,

The National Association of REALTORS®
Appraisal Institute

Mrs. CUBIN. We will recess until 4 o'clock.

[Recess.]

Mrs. CUBIN. The Subcommittee will please come to order. I would like to thank you for coming back, Congressman Kanjorski, and I just have a few questions for you.

As you know, I am a cosponsor of your bill, and I like the notion of bringing additional money in for reclamation, and especially with the focus on local control. The projects addressed in your bill would be more detailed than those that are funded by the AML today. How do you envision AML Area of Redevelopment Act working in tandem with the priorities of the AML program?

Mr. KANJORSKI. Well, I think it is the very essence of the difference that we have to strike. First of all, let me say that I support the refunding and reauthorization of the abandoned mine land program. However, if you work with that program and with the administrators of that program, I think they are all frustrated because it only addresses Priority One and Priority Two questions. There are limitations of the use of money of how even the recycled or reclaimed land can be used. The purpose of my bill is to put a challenge to local communities, authorities, regional areas, to look at the holistic approach to land reclamation and water cleanup,

and to know for certain that once they develop a plan or scheme that will take 20 or 30 years to complete, the funds will be in place and of a known quantity, so that they can proceed with great efficiency to accomplish the totality of the problem.

What we have now under the abandoned mine money is that we run into situations that, one, the money gets diverted for special purposes, for instance, mine fires, and as a matter of fact I have a photo to show you here that is very representative of my area, where just no more than a year ago, suddenly there is this huge mine fire. As you can see, it is a coal bank that has probably 10 to 20 million tons of carbonous material. It was set on fire on the surface because of waste product being dumped there, and was caused by either spontaneous combustion or mischievous combustion, we don't know. That mine fire took probably a year to extinguish at a cost of several millions of dollars, which were diverted funds really from these projects that wouldn't go for reclamation. When we get all done, we still have the same coal bank there, we still have the same disaster there, and we have no reusable land. Whereas, if we take two, 3 years in every year to study in totality the land reclamation—and take the example of Eastern Pennsylvania that Mr. Holden referred to, the anthracite region. We conceptualize that we have about 110,000 acres located in some 14 counties. We will do a comprehensive watershed study, and it falls into several watersheds, the Susquehanna or Chesapeake and the Delaware. So the entire area has to be mapped out with a GIS system. We have already started to implement that sort of thing.

What that means is we will not only clean up the land at a significantly reduced cost, because on average the Abandoned Mine Land Program spends about 34 percent on engineering costs. By the effective use of GIS system design for reclamation we have some detailed information that suggests that we can drop that figure by at least half, if not around 12 percent. That is a significant savings and hundreds of millions of dollars just in an area like mine. Across the country it represents billions of dollars in saving.

Two, you will do it in a prioritized way. Because you are going to clean up the land and the water, rather than starting where the rivers get polluted to do some reconstruction work, you are going to start and look at the outlying tributaries that flow through land that has to be reclaimed and in fact reclaim that land. Second, when you reclaim that land you are not going to do it in accordance with the standards today. First and second priority under the Abandoned Mine Land Program doesn't allow for compaction, for instance. So that if you have a huge hole—

Mrs. CUBIN. Doesn't allow for what?

Mr. KANJORSKI. Compaction of the land. So that if you have a huge void of 100 million cubic yards, you fill it in at a tremendous cost, but if while you were filling it in you compact it at four 6-foot levels, that land immediately becomes reusable for industrial, commercial or real value. If you just fill it in and allow nature to compact, it can't be used for 50 or 100 years.

Then when we finally get done and we fill these holes in, we only require a half inch to an inch of topsoil on top, enough to grow grass. Well, quite frankly, all of Eastern United States, particularly Pennsylvania, has a history of one of the finest hardwood areas of

the country. For those purposes we should study that and try, in the development of our comprehensive plan, to those areas that can sustain hardwood forests, make sure there is enough under-soil to facilitate the regrowth of the natural forest there. We are doing this for all time immemorial really.

Now, the final real benefit of this type of program, particularly in the eastern fields of the United States, if you look at land that was to be reclaimed—can we have that one site—if you reclaim this land, you will find if you study the land and the map of the land, most of the mining lands in the Eastern United States and eastern Pennsylvania are right where the dense populations live, right where the railroads, highways and utilities exist. So you take a reclamation area such as this, you recover it and compact it and make it immediately recyclable and reusable for, for instance, an industrial park. That way, when you need a thousand-acre industrial park, you don't have to go out and get pristine farmland and convert it to an industrial park and then have the Commonwealth and the Federal Government pick up all the expense attendant to putting in highways, utilities and other infrastructure. In fact, you are right in a site where all of those things exist now, interstate highways, utilities, all the structures are there, so that you are recapturing some of the infrastructure money that we don't get counted in through the cost of land reclamation and the value of land reclamation. When you get all done, you have taken and recycled the land for all of its purposes.

If you do this holistically, comprehensively, you will reclaim the land and you will, by formula, you will reclaim the acid mine drains. Let's show the Chairman what a good nice fishing stream in northeastern Pennsylvania looks like. I hope you can see it from there. It will have at least a dozen or two tires, and it has an orange, beautiful orange shade to it, even though it is water, it is also orange in color range here. We find that acid mine drainage. All the water that lands on the surface of this untreated, unclean land, exacerbates the sulfurs and the irons that are there, drains them into the creeks, eventually drains them into the major rivers. In our area it is the Susquehanna River, and then drains that river down into the Chesapeake Bay about 150 miles south, giving us the distinct honor, to 20-mile stretch of the Susquehanna River that is encompassed with a major part of this surface mining problem is the major polluter, manmade polluter of the Chesapeake Bay. We are spending hundreds of millions of dollars to clean up the Chesapeake Bay, and nobody is walking upstream 150 miles and saying, gee, if we spent several hundred millions of dollars to clean up the land, it would clean up the water, and therefore we would have a clean amount of water flowing into the Chesapeake rather than the largest amount of pollution flowing into the Bay.

So I am asking the Committee to sit back and say, look, let us recognize authorizing the abandoned mine program or even expanding it, unless it is done with absolute continuity of funding—and that we cannot guarantee because it is an appropriation process—when environmental interests and pressure groups are hot, the money is there. When we run into deficit and the monies are needed for other things, they are traded off for other things. We

know that is going to happen. We are in that process right now of getting little of our money back.

If we do it through the tax credit bond issue, when we put our comprehensive program to clean up 110,000 acres of the anthracite fields, we will have driven a comprehensive program to clean up all the land, clean up all of the water, put in the infrastructure necessary for it to develop. With one full swoop with an expenditure of, in that area, \$2 billion over 30 years, we never have to come back, and we have literally returned the land to usability as it was prior to mining practices. If we take that example and apply it across the country, that can happen in every area. What we have already started in our area is a organization we started about 10 years ago called the Earth Conservancy, where we acquired 17,000 acres of mine lands. Over the last 10 years we have designed, studied the reclamation of it, and started to reclaim the land ourselves, and we find out that we make reclamation of land there almost costing nothing, because what we are able to do is plan the cost of returning the land and reclaiming it, and also getting some of the product value out of the materials that are on the land.

When you work in that multi-faceted way, holistically, it is cheaper, more efficient, more effective, and the beginning and the end are both seen.

Mrs. CUBIN. Thank you very much.

Do you have any questions, Mr. Rahall?

Mr. RAHALL. No questions.

Mrs. CUBIN. Thank you very much, Congressman Kanjorski, and as we move forward we certainly will take all of this into consideration. Thank you.

Mr. KANJORSKI. Thank you, Madam Chairman.

Mrs. CUBIN. Now I would like to call the next panel for their testimony. We just have one person. Jeff Jarrett, the Director of the Office of Surface Mining.

Mr. Jarrett, it is the policy of the Committee this year to swear in the witnesses, so if you wouldn't mind to stand and raise your right hand.

[Witness sworn.]

Mrs. CUBIN. Thank you for being with us today. Please accept my sincere apology for keeping you waiting for 2 hours. We have important business going on, but we are having trouble getting there.

So I would like to recognize you for 5 minutes, and look forward to your testimony.

**STATEMENT OF JEFFREY D. JARRETT, DIRECTOR, OFFICE OF
SURFACE MINING RECLAMATION AND ENFORCEMENT, U.S.
DEPARTMENT OF THE INTERIOR**

Mr. JARRETT. Thank you, Madam Chairwoman, and distinguished members of the Subcommittee. Thank you for the opportunity to participate in this hearing and to discuss the important issue raised by the approaching expiration of OSM's authority to collect abandoned mine land fee.

As you know, our fee collection authority is scheduled to expire in September 2004. Unfortunately, despite the many accomplishments of this program, the job isn't finished. More than \$3 billion worth of priority one and two, health and safety coal problems still

remain. We have another \$3.6 billion worth of identified priority two coal problems affecting the general welfare of individuals in the coal fields and numerous lower priority environmental coal-related problems.

Even if we use all the collections received between now and September 30th of 2004 when the fee will expire, the unappropriated balance of \$1.5 billion, we will still be left with about \$1.8 billion worth of health and safety-related problems as well as the other general welfare and environmental problems.

With today's ever-expanding communities, these sites are not all in some out-of-the-way corner of the map. A recent study conducted by OSM estimated that 3-1/2 million Americans live less than one mile from a priority one or priority two health and safety hazard created by abandoned coal mines.

In order to finish the job Congress gave us to abate the health, safety and environmental problems left behind by mining that occurred before SMCRA was passed, the Bush administration fully supports the reauthorization of the AML fee collection authority.

For some time now I have been discussing reauthorization with a broad range of stakeholders. Those I have talked with agree that abating AML hazards is a job that needs to be done, so there is substantial agreement that the AML fee collection authority should be reauthorized. There is also substantial demand that fundamental changes be made to the existing structure of the program. The universe of proposed modifications differ as much as the stakeholders who support them. Nevertheless, there are themes that have emerged from our discussions in which I am confident you will have to grapple with as you craft legislation to finish the job.

The first and clearest theme to emerge was the call for the wise, efficient and effective use of AML funds collected. We took a pretty hard look at how we might be able to accomplish more reclamation with the funds being allocated, and we devised several promising program enhancements, such as providing AML fee credits and bond credits for remaining sites, requiring State programs to operate their own AML emergency program, redistributing RAMP funds to the State grant program and avoiding administrative duplication with respect to accounting and fee collection activities. All of these enhancements are aimed at leveraging the dollars available to this program.

When we looked closely at the program we found a fundamental imbalance or tension between the goals established by SMCRA and the way funds from the AML program are required to be allocated by SMCRA itself. I am convinced that the ability of the AML program to meet its primary objective of abating AML problems on a priority basis is being hindered by our statutory allocation formula, which results in a progressive distribution of resources away from the most serious AML problems.

The reason is quite simple. On a national average and over the life of the program, money must be allocated to States and tribes from the State share accounts and the historic production account at a ratio of 2-1/2 to 1, that is, only 29 percent of the total national grant amount is distributed among the States based on historic production which has a direct correlation to the magnitude of the AML problem. The majority of the grant dollars, 71 percent of the

total amount, is distributed among the States and tribes based on fee income generated from each, even though there is no relationship between the State share portion of the grant and the magnitude of the AML problem.

I would like to direct your attention to the flip chart to explain why the allocation formula has become even more counter-productive in recent years.

Based on historic production records, we know that 94 percent of the AML problems are in the eastern United States. The chart shows how the fee income demographics have changed over time. The chart reflects the general shift in coal production from the east to the west, and more significantly, a shift in the east from surface mine production to deep mine production, which is assessed at the lower AML fee of 15 cents per ton.

Over the past 25 years fee income has shifted away from the areas with high historic production and into areas where there are fewer or no remaining AML problems. Because 71 percent of the total grant dollars is based on current production, there has been a corresponding shift of AML resources away from the areas with the most significant AML problems.

The statutory schedule for allocation of AML resources, together with the changing demographics, has some significant consequences to the program's primary objective of abating AML problems on a priority basis.

First, as you can see on the next chart, which shows how many years it will take for each State to complete its high-priority projects, it results in there being no parity among the States and tribes in terms of the rate of AML reclamation. Today some States have completed reclamation on all abandoned coal mine sites, while others are still decades away from completing the most critical high-priority sites. It is distressing that the same law that demand States abate AML hazards within their borders on a priority basis, also prevents us from abating AML hazards nationally on a priority basis.

The second consequence of the allocation formula and the changing demographics is illustrated on the next chart, which shows the decline in AML grant dollars being spent on priority abandoned coal mine reclamation. As you can see, from 1977 through '93, about 99 percent of the State grant dollars was used to reclaim abandoned coal mine sites. 95 percent of that was directed to high-priority work. From '94 through 2002, only 64 percent was used for high-priority work. This trend will continue. I want to be clear right now that the States with remaining high-priority sites still spend the majority of their money abating those high-priority problems. In order to finish the job in an efficient and effective manner, we must take advantage of this opportunity to make some fundamental changes in the law, to redirect and refocus the AML program toward health and safety hazards.

The next critical theme that must be addressed has to do with the current, unappropriated State share balances in the AML fund. Since the enactment of SMCRA, 50 percent of the funds collected from a State or tribe have been allocated to that State or tribe's State share account, as has the balance of the income been allocated to other appropriate accounts. Because historically, annual

appropriations have been less than fee income, choices had to be made regarding which accounts to make distributions from. The result is that the historic production account has been held at a level unappropriated balance, while the unappropriated balance in the State share accounts has been allowed to grow.

As you can see in the next chart, nearly \$1 billion in the State share accounts remains unappropriated and unavailable for use by the States. About 50 percent of that balance is owed to States that have certified completion of all abandoned coal mine sites. As we grapple with the issue of how to allocate fee income from future collections, we need to address the issue of the unappropriated State share balance from past collections.

The final theme that is an important part of the reauthorization equation is OSM's obligation under the law to transfer the interest from the AML fund to the United Mine Workers Combined Benefit Fund. I understand that you will be receiving testimony later today on the needs of the CBF, but in summary, I will say that the interest earnings from the AML fund are currently insufficient to meet the needs of the unassigned beneficiaries. The CBF has reported that the needs of the unassigned beneficiaries are estimated to peak for next year at \$88 million. Earnings from the AML fund in 2002 were only \$42 million, and earning rates have declined substantially since that time.

While providing health care benefits is not part of OSM's mission, providing interest transfers to the Combined Benefit Fund is an important obligation.

We will continue to work on administrative issues to increase the interest earnings at the same time as we work to resolve the issues associated with the allocation formula and the unappropriated State share balance, we must be mindful of the potential impact any decision will have on the AML balance, and thus on the available interest for transfer to the Combined Benefit Fund.

I greatly appreciate the time and attention that has been committed to these important issues by members of this Subcommittee, and while there are no easy answers, I believe that we can find common ground that will result in an efficient and effective program that refocuses reclamation toward the highest priority work, but yet addresses other commitments and obligations.

I look forward to continuing to work with you to develop legislation to reauthorize the AML fee and get this job finished.

[The prepared statement of Mr. Jarrett follows:]

**Statement of Jeffrey D. Jarrett, Director, Office of Surface Mining
Reclamation and Enforcement, U.S. Department of the Interior**

Madam Chairman and distinguished members of the Subcommittee, thank you for the opportunity to participate in this hearing and to discuss the important issues raised by the approaching expiration of the Office of Surface Mining Reclamation and Enforcement's (OSM) authority to collect the Abandoned Mine Land fee.

More than 25 years ago Congress passed the Surface Mining Control and Reclamation Act (SMCRA). At that time, Congress created the OSM to enforce the Act and authorized it to collect AML fees to finance reclamation of abandoned mine lands.

The record of accomplishments for this program is impressive. Since 1977, the AML program has been responsible for the reclamation of thousands of acres of abandoned mine sites and the elimination of serious threats to public health and safety. Our partners in reclamation, the primacy states and Indian tribes, have done an outstanding job of reclaiming lands and waters damaged by past mining

practices. Because Congress enacted SMCRA and has supported the AML program, living and working in the coalfields is safer and healthier than ever.

As you know, our fee collection authority is scheduled to expire in September 2004. Unfortunately, despite the many accomplishments of this program, the job isn't finished.

More than \$3 billion worth of listed health and safety coal problems still remain. We have another \$3.6 billion worth of identified high priority coal problems affecting the general welfare of individuals in the coalfields and numerous lower priority environmental coal-related problems.

Even if we use all collections received between now and September 30, 2004, when the fee will expire, as well as the unappropriated balance of \$1.5 billion, we would still be left with approximately \$1.8 billion worth of health and safety related problems as well as other general welfare and environmental coal-related problems.

These are not merely "ugly landscapes" that need to be made more attractive. These are serious, life threatening, high-priority hazards that have been around for more than 26 years and haven't yet been cleaned up.

Here are some examples of the dangers posed by some of these sites:

- April 2001—On an abandoned mine property in Harlan County, Kentucky, two juveniles were riding All-Terrain-Vehicles (ATV's) down a steep unreclaimed and unstable grade when one lost control of his ATV, overturned, rolled approximately 40 feet to the bottom of an inclined area, and died from his injuries.
- January 13, 1996—A college student in Colorado was lead by curiosity into an abandoned coal deep mine where he died from lack of oxygen.
- At Pennsylvania's Muddy Creek East Reclamation project, a site where mining ended in 1952 leaving dangerous highwalls, hazardous water bodies and spoil material, 10 recorded deaths occurred at the site until it was finally reclaimed in 1998.

With today's ever expanding communities, these sites are not all in some out of the way corner of the map. A recent study conducted by the OSM estimated that 3.5 million Americans live less than one mile from health and safety hazards created by abandoned coal mines.

If we are to finish the job Congress gave us to abate the health, safety and environmental problems left behind by mining that occurred before SMCRA was passed, it is imperative that we reauthorize the AML Fee collection authority. The Bush Administration fully supports the reauthorization of AML Fee collection authority.

For some time now I've been discussing reauthorization of SMCRA with members of Congress, coal industry representatives, state reclamation officials, and environmentalists. Those I have talked with agree that abating AML hazards is a job that needs to be done. Accordingly, there is substantial agreement that the AML Fee collection authority should be reauthorized. Many people also agree that fundamental changes must be made to the existing structure of the program. The universe of proposed modifications differs as widely as the stakeholders who support them. Nevertheless, common themes have emerged from my discussions. These themes present issues that Congress will confront as it crafts legislation to complete the cleanup and reclamation work begun under SMCRA.

The Allocation Problem

The clearest and most high priority theme to emerge from my discussions is the call for the wise, efficient, and effective use of the AML funds collected. We looked at how we might be able to accomplish more reclamation with the funds being allocated and we devised several promising program enhancements, including: AML fee credits for remining sites; bond credits for remining sites; requiring state programs to operate their own AML emergency programs; and avoiding administrative duplication with respect to accounting and fee collection. Each of these enhancements is aimed at leveraging the dollars available to this program.

The reasons underlying why we are not accomplishing more with the funds being allocated are not related to malfeasance, misfeasance, or abuse of funds. Rather, there is a fundamental imbalance between the goals established by SMCRA and the way funds from the AML Program are required to be allocated under the Act. As a result, the ability of the AML Program to meet its primary objective of abating AML problems on a priority basis is being hindered by the statutory allocation formula, which results in a progressive distribution of resources away from the most serious AML problems.

SMCRA requires that all money collected from tonnage fees assessed against industry on current coal production (\$0.35/surface mined ton and \$0.15/deep mined ton) be deposited into one of several accounts established within the AML fund. These accounts are discussed more fully below. Money in each of these accounts can be used only to accomplish the statutory purpose for which that account was

established. Account funds that are not spent in any one year must remain in that account. Typically, money in one account cannot be transferred to another account or be used for any other purpose.

Fifty percent (50%) of the fee income generated from current coal production in any one state is allocated to an account established for that state. Likewise, 50% of the fee income generated from current coal production on Indian lands is allocated to a separate account established for the tribe having jurisdiction over such Indian lands. The funds in these state or tribal share accounts can only be used to provide AML grant money to the state or tribe for which the account is established.

Twenty percent (20%) of the total fee income is allocated to the "Historic Production Account." Each state or tribe is entitled to a percentage of the annual expenditure from this account in an amount equal to its percentage of the nation's total historic coal production—that is, coal produced prior to 1977. As is the case with state or tribal share money, each state or tribe must follow the priorities established in SMCRA in making spending decisions using money from the historic production account. However, unlike the allocation of state or tribal share money, once the state or tribe certifies that all abandoned coalmine sites have been reclaimed, it is no longer entitled to further allocations from the historic production account.

Ten percent (10%) of the total fee income is allocated to an account for use by the Department of Agriculture for administration and operation of its Rural Abandoned Mine Program (RAMP).

The remaining 20% of the total fee income is allocated to cover Federal operations, including the Federal Emergency Program, the Federal High-Priority Program, the Clean Streams Program, the Fee Compliance Program, and overall program administrative costs.

The annual appropriated AML grants to states and tribes are derived from money from the state and tribal share accounts and money in the historic production accounts. On a national average, money is distributed to states and tribes from the state and tribal share accounts and the historic production account at a ratio of 2.5 to 1. That is, 29% of the total national grant amount is distributed among the states and tribes based on historic production which has a direct correlation to the magnitude of the AML problem. The majority of the grant dollars, 71% of the total national grant amount, is distributed among the states and tribes based on income generated from each by current production. However, there is no relationship between the current production state or tribal share portion of the grant and the magnitude of the AML problem in that state or tribe.

This statutory allocation schedule for AML resources has significant consequences to the overall program's primary objective of abating AML problems on a priority basis. Specifically, there is no parity among the states and tribes in terms of the rate of AML reclamation. Today, some programs have completed reclamation on all of the abandoned coalmine sites or are working on low priority sites while others are still decades away from completing the most critical high-priority sites.

This situation is dramatically illustrated in the attached chart which depicts one projection of how many years it will take for each state and tribe to complete its high-priority projects under the current allocation formula. It is clear that even though states and tribes substantially comply with the priority reclamation system established in SMCRA within their borders, there is no semblance to adherence to that priority system on a National basis.

To understand the impact of the allocation system on the AML program, one must also understand the demographics of the AML problems and the changing demographics of AML fee income. Based on historic production records, we know that 94% of the AML problems are in the eastern United States. The attached chart depicting the trends in AML fee collection shows how the fee income demographics have changed over time. The chart reflects the general shift in coal production from the East to the West. More significantly, it reflects a shift in the east from surface mine production to deep mine production, which is assessed at the lower AML fee of fifteen cents per ton.

In the early years of the AML program, the fee income was generally aligned with the magnitude of AML problems—75% of the income was in the East where 94% of the AML problems existed, and 25% of the income was in the West where 6% of the AML problems existed. Correspondingly, the state and tribal share portions of the grants were generally being distributed in amounts roughly proportional to the AML problem, much like the historic production portion of the grants is intentionally distributed. Much was accomplished during those early years of the AML program. Over the past 25 years, fee income has shifted away from the areas with high historic production and into the areas where there are fewer or no remaining AML problems. Because 71% of the total grant dollars is based on current

production, there has been a corresponding shift of AML resources away from the areas with the most significant AML problems.

The chart depicting Reclamation Trends gives a clear picture of how all of these factors come together to impact the AML program's ability to accomplish its primary objective.

From the program's inception in 1977 through 1993, about 99% of the state grant dollars was used to reclaim abandoned coalmine sites. Ninety-five percent (95%) of that money was used for high-priority AML reclamation. From 1994 through 2002, as current production shifted to regions with fewer AML problems, only 71% of the state grant dollars was used to reclaim abandoned coalmine sites, and only 64% was used for high-priority AML reclamation. This trend will continue into the future as more states that generate the fee income and are therefore entitled to higher percentages of the total grant dollars complete their high-priority AML work, but continue working on low-priority sites and other authorized projects. In order to finish the job in an efficient and effective manner, we must take advantage of this opportunity to make some fundamental changes in the law to redirect the focus of the AML program toward health and safety hazards.

There are several other critical themes that are interwoven with the allocation issue that will also need to be addressed.

Commitments made to states and Indian tribes under the current law

Since the enactment of SMCRA, 50% of the funds collected from a state or tribe has been allocated to that state or tribe's share account. A substantial portion of these accounts, however, has not been appropriated for the use of the states or tribes. Through the end of Fiscal Year 2002, \$944,768,493 of state and tribal share accounts remains unappropriated. About one half of the unappropriated state and tribal share balances are owed to states and tribes that have certified completion of their abandoned mine sites. As we grapple with the issue of how to allocate fee income from future collections, we need to address how to deal with the unappropriated state and tribal share balances from past collections.

Transfers to the United Mine Workers Combined Benefit Fund

One final theme that is an important part of the reauthorization equation is the OSM's obligation under the law to transfer the interest from the AML Fund to the United Mine Workers Combined Benefit Fund (CBF). I understand that you will be receiving testimony later today on the needs of the CBF for unassigned beneficiaries, a long-standing Federal responsibility. The interest earnings from the AML fund are currently insufficient to meet the needs of the CBF. For 2004, for example, the needs of the unassigned beneficiaries of the CBF are estimated to peak at \$88 million. Actual interest earnings from the AML fund for FY 2002 were only \$43 million, and interest rates have declined since that time.

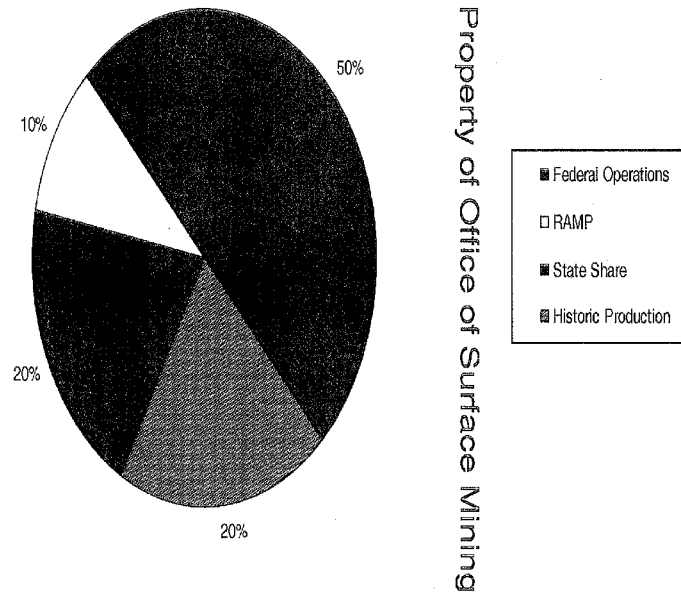
It is important to note that, should the AML Fee collection authority not be reauthorized, § 402 (b) of SMCRA obligates the OSM to establish and collect a fee at a rate sufficient to continue to provide for interest income transfers to the CBF. While we are hopeful that the AML fee will be re-authorized, in order to have the necessary regulations in place should the authority expire, we would have to start a formal rule-making process later this year. Later this summer, I anticipate publishing an advance notice of a proposed rule-making to begin this process and to ensure that we can continue to fulfill our obligation to the CBF.

This afternoon I have identified three themes that must be included in any SMCRA reauthorization proposal: addressing the allocation problem; addressing commitments made to states and tribes; and fulfilling obligations to the CBF. The difficult task for those who must develop proposals to address these themes is that all of the themes, and the stakeholders supporting them, are vying for the same available dollars.

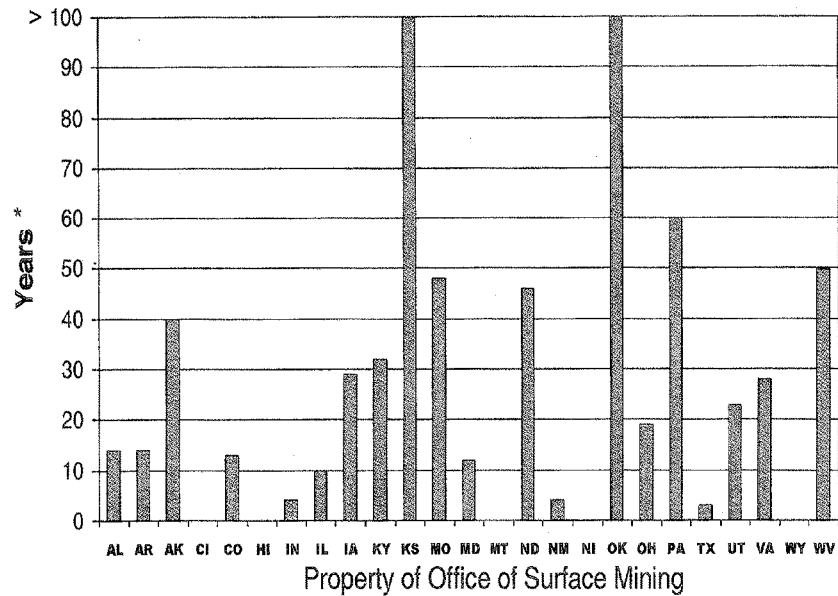
Conclusion

I greatly appreciate the time and attention that has been committed to this important issue by members of this Subcommittee. While there are no easy answers, I believe that we can find common ground that will result in an efficient and effective program that refocuses reclamation towards the highest priority work, yet address our commitments and obligations under SMCRA. I look forward to continuing to work with you to develop legislation to reauthorize the AML fee and get this job done. I would be happy to answer any question you might have at this time.

AML Fund Statutory Allocations

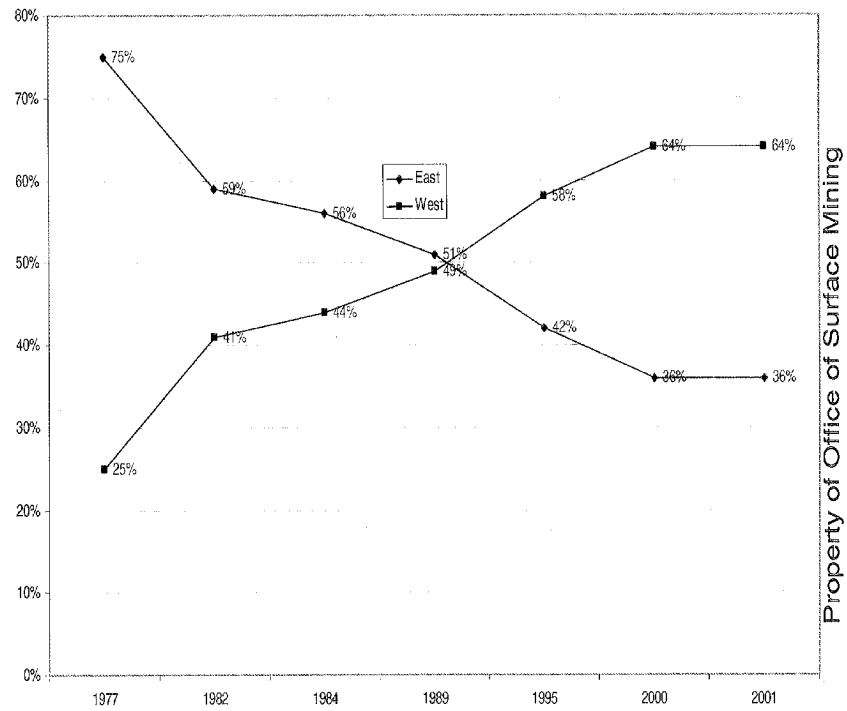


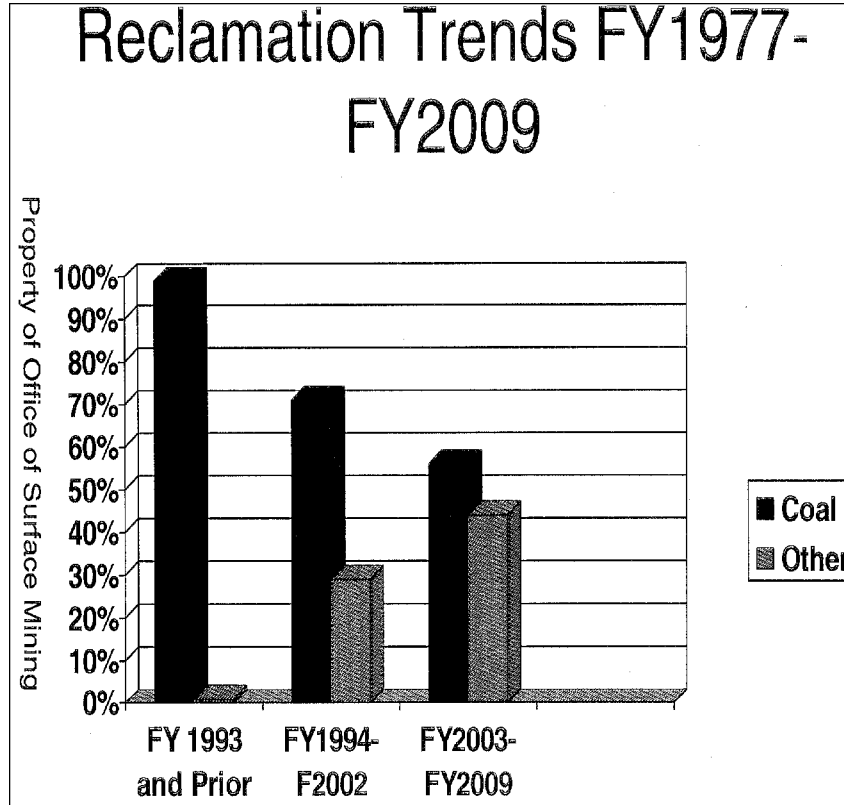
**Years Necessary to Complete All Existing,
Recorded, P1/P2 Health and Safety Coal Problems
Under Current Allocation Formula**



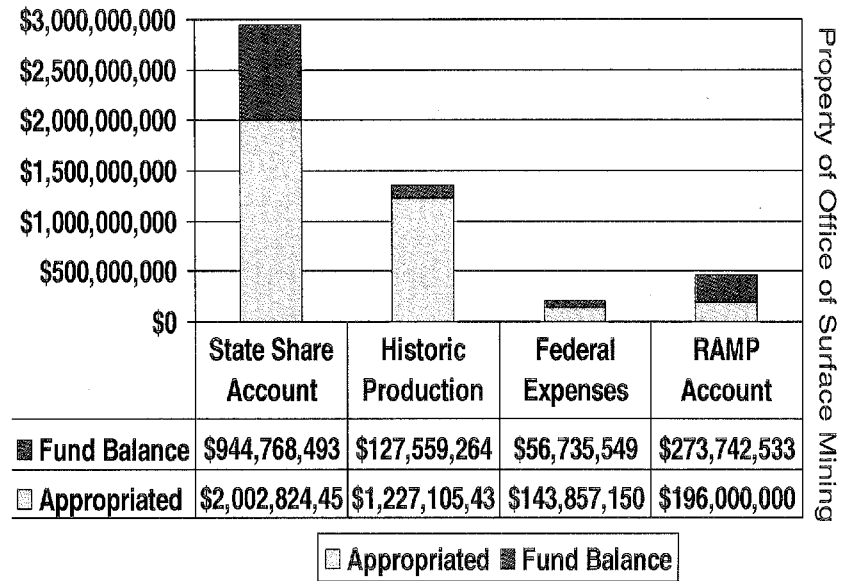
* The number of years are determined by dividing a state or tribes' recorded inventory by the amount of its annual AML grant spent on high priority reclamation. Thus, while other states' inventories are larger, as a minimum program state receiving an AML grant of only \$1.5 M per year, Kansas and Oklahoma will require in excess of 100 years to complete its high priority problems.

Trends in AML Fee Collection: Eastern and Western Producers





Individual AML Account Status



State/Tribe	State Share Balance as of 9/30/02	State Share Balance Percentage as of 9/30/02
Alabama	16,024,677	1.70%
Alaska	1,880,229	0.20%
Arkansas	5,477	0.00%
Colorado	21,063,009	2.23%
Illinois	27,640,806	2.93%
Indiana	37,218,609	3.94%
Iowa	38,265	0.00%
Kansas	410,500	0.04%
Kentucky	116,907,233	12.37%
Louisiana	1,194,217	0.13%
Maryland	2,952,330	0.31%
Missouri	917,666	0.10%
Montana	42,490,641	4.50%
New Mexico	19,506,738	2.06%
North Dakota	10,906,598	1.15%
Ohio	22,769,609	2.41%
Oklahoma	1,991,247	0.21%
Pennsylvania	54,706,822	5.79%
Texas	18,366,038	1.94%
Utah	13,223,218	1.40%
Virginia	24,601,619	2.60%
West Virginia	115,800,326	12.26%
Wyoming	354,522,825	37.52%
Crow Tribe	6,604,739	0.70%
Hopi Tribe	5,009,786	0.53%
Navajo Nation	28,015,272	2.97%
Totals	\$944,768,493	100.00%

Mrs. CUBIN. Thank you very much. I will begin questioning. How do you propose that we address getting the State share balances returned to the States to which they are owed?

Mr. JARRETT. I think the first thing we have to do is to quit digging in the hole and address the allocation problem. If we can adequately address the allocation problem we would then have to

deal with a finite universe of unappropriated State share balance, which by next September will be a little over \$1 million. For the noncertified States, I think the best way to deal with that is first of all to make future distributions based on the magnitude of the problems, in other words, tie them in directly to historic production.

As we make those distributions to the noncertified States, we need to discount the historic production distributions by an amount equal to the State share distribution. Currently we make the distributions based on current production from the State share accounts and from the historic production account, but when we make the historic production distribution we are not allowed to take into consideration the amount of money that a State already received from the State share account.

So even if there is sufficient money coming from the State share account, we would still have to give that State its share of the historic production account, even though it may not be needed.

Finally, I think we would need to pay the residual State share balances first. If we do not, we will end up in the situation in the future where other States certify completion of their AML problems, and we will be left with unappropriated State share balances for those States that we will have to deal with.

I think the certified States are a little bit more difficult to figure out how to get that money back to them. Clearly, we need to establish some schedule for payout to those certified States, and my personal feeling is that we really need to find some new dollars to meet that obligation; otherwise, we are going to be competing with the very same dollars that we think we need to address the high-priority problems that still remain in other States.

Mrs. CUBIN. We all know the money has to be appropriated, and as you suggested, there are competing needs, and, you know, the possibility of getting the money appropriated through Congress depends in large part on the administration and on the administration's—the extent to which the administration will bring pressure on the Congress to get it done. Do you think the administration has the will to support an off-budget solution to the State share?

Mr. JARRETT. As I am sure you know, generally, we oppose any mandatory appropriations, so there is a very high bar that has to be hurdled before—

Mrs. CUBIN. I am not necessarily speaking of unappropriated funds. I personally kind of oppose that, too. But—well, go ahead.

Mr. JARRETT. Well, I guess what I'd say is that while as a general matter the administration opposes any mandatory appropriation, I think we're trying to deal with a very difficult issue. I think there are cases that could be made to support putting additional money into resolving this particular problem. So I guess my commitment would be that any mandatory appropriation or off-budget proposal, I would give very serious consideration to that proposal. If that entire package resolved the issues that we're all trying to grapple with on this reauthorization package, then I would certainly want to vet that proposal with senior managers within the Department of Interior and OMB.

Mrs. CUBIN. Does the administration have any suggestions where the money outside the AML Fund should come from?

Mr. JARRETT. You mean to pay off the certified States or to pay the unappropriated State share balance?

Mrs. CUBIN. Yes, that and continue, for example, the CBF and the other problems associated with the AML.

Mr. JARRETT. Yes, I mean, this, maybe again, may sound a little bit crazy, but what we need is cash, not funds. We have the funds—the money has been credited to the AML Fund. What we don't have is the actual cash to—

Mrs. CUBIN. Then let me restate my question. Does the administration have any ideas where we can get the cash to take care of paying the certified States their share and the CBF problem?

Mr. JARRETT. I do not have any specific ideas. I can tell you that I have been working very hard within the Department and with OMB. We have found a little bit of money, but not enough yet, and we're continuing to look. I'm continuing to look for more money.

Mrs. CUBIN. Does the administration think that the coal sold in—or considering the certified States, that the coal sold in those States continue to be assessed at the same fee when virtually all the reclamation will take place somewhere else?

Mr. JARRETT. You mean the coal sold or the coal mined?

Mrs. CUBIN. The fee.

Mr. JARRETT. The fee's based on production.

Mrs. CUBIN. That is right, the fee is based on production. Should the coal sold in those States continue to be assessed at the same fee as coal produced in non-certified States?

Mr. JARRETT. Coal produced...

Mrs. CUBIN. At the same rate, let me say that.

Mr. JARRETT. Yes, I could craft an argument for or against such a proposal, but, quite frankly, I'm a little bit troubled by that proposition. So maybe what we really need to do is take a step back and put this problem in perspective.

For 200 years this country mined coal, and we know most of that coal was mined east of the Mississippi River. And that was very cheap coal, and all Americans benefited from that very cheap coal. Not just the people who lived in Pennsylvania or the people who lived in West Virginia, but people across this country benefited from that coal. That cheap coal was used to build steel, to build the bridges to get to the West, if you will. And I know we've had these arguments in the past about who should pay for it. But because we all benefited, I think that the price that we're now paying to clean up from the aftermath of 200 years' worth of mining also needs to be paid for by all Americans. And the real question that we're grappling with is: What's the best vehicle to allow all Americans to pay for—

Mrs. CUBIN. So when you say all Americans, it wouldn't mean that one State pay 40 percent.

Mr. JARRETT. I think we have to take a look at who is really paying. You're going to hear testimony later today from a utility. I believe that that utility company will testify that the 35 cents is embedded, if you will, in the price that they have to pay for that coal, and that it is further—those costs are passed on to the consumers.

Mrs. CUBIN. But that isn't answering my question. That isn't answering my question. I agree with you this is a problem that requires a national solution. But the amount of money that is paid into the AML, 40 percent of it comes from one State. That doesn't sound like a national solution to me. That sounds like the burden is being carried by one State.

Mr. JARRETT. I understand that it looks that way. I guess what I'm saying, though, is that it is not—and in the case of Wyoming, it is not the administration in Wyoming who is paying that fee, or those operators who are mining in Wyoming paying—

Mrs. CUBIN. But Wyoming is not getting its share. We don't need to argue about this.

Mr. JARRETT. Yes. I'm just saying—

Mrs. CUBIN. But Wyoming isn't getting its money, and, you know, if you want to make the point that it is a national problem and all Americans need to be part of the solution, then the 490,000 people that live in Wyoming should not be burdened with the majority or a disproportionate share. Would you agree with that?

Mr. JARRETT. I believe that I do not want to be in the business of collecting a fee in Wyoming, the State share portion, and then turning around and giving that same amount of money back to the State of Wyoming so that they can use it on something that has nothing to do with the Abandoned Mine Land Program. We shouldn't be collecting it in the first place.

But the point I'm trying to make is that I think that same argument can be made in virtually all of the States, whether they're certified or not. And I guess I question whether or not certification is a good criteria to determine what AML fee rates ought to be.

So I guess, you know, I mean, I think it would be worth pursuing the idea of eliminating State share contributions nationwide and then look at the contributions to the Federal pot of money that gets distributed based on need and adjust that rate to whatever level it needs to be so that we can get the job finished in a reasonable period of time.

Mrs. CUBIN. Well, I have to suggest that I don't even necessarily think that the coal industry, whether it is Western coal or Eastern coal, having agreed on the fact that we think this is a national problem, that it should necessarily be the coal industry alone that is responsible for cleaning up a national problem that is, like you said, 100 or 200 years old. I don't see the rationale of why the coal industry should be paying the whole burden for a national problem, Eastern or Western coal.

Mr. JARRETT. I guess what I'm saying is I would agree with that. I think the operators in Wyoming are no more or less responsible for the problems than the operators in West Virginia are responsible for the problems. And they're no more or less responsible than anyone else who lives in this country.

Mrs. CUBIN. And I think that is our challenge, to try to come up with something that is fair, that is more equitable than what we have now. I think we all agree on that.

How do you propose that we provide money to the CBF in the future?

Mr. JARRETT. Well, I don't know that the interest earnings from the AML Fund can satisfy all of the needs for the unassigned beneficiaries—

Mrs. CUBIN. It can't. We know it can't.

Mr. JARRETT. —in the Combined Benefit Fund, and that seems to me that it is a problem. It is a longstanding commitment of the Federal Government to take care of that need, but the interest earnings from the AML Fund we know aren't going to be sufficient to do that. It's a problem that is begging another solution.

Mrs. CUBIN. And do you intend to come up with any suggestions for that solution?

Mr. JARRETT. We are not working on any solutions outside the context of the Abandoned Mine Land problem. My obligation is to do the very best I can in getting—making the interest transfers to the Combined Benefit Fund, but, you know, that is not an OSM program. We're not in the business of providing health care benefits.

Mrs. CUBIN. So, to your knowledge, is anyone in the administration looking for a way—because we know there is not enough money to fund CBF. Is anyone in the administration looking for a way to find money to fund that?

Mr. JARRETT. Not to my knowledge.

Mrs. CUBIN. OK. Thank you.

The AML Fund is currently receiving interest at a little over 1 percent. Is there any way to increase the interest that we earn on that fund? Once again, I realize that that is not your job to invest those funds.

Mr. JARRETT. Well, it's not—it's the Treasury's job to invest those funds, but I do have a lot to say about how those investments are going to work. It's my responsibility to report to the Secretary of Treasury the amount of monies that I will need for immediate withdrawal and the amount of monies that can be invested for the longer term.

When I started in this job, I found that OSM was using some assumptions about what monies might be needed for immediate withdrawal that I do not agree with. That was actually pointed out to me by the United Mine Workers. The bottom line is OSM was working on some assumptions that said, you know, it might just be possible that we'll wake up tomorrow morning and find that some judge or Congress has ordered us to write a check for the entire \$1.5 billion unappropriated in the fund; therefore, we have to keep those investments very liquid so that we don't end up being in violation of anti-deficiency laws.

Those assumptions I have changed, and we probably don't need to get into the new assumptions that we have established, but we do have new assumptions that we're working on right now. The two obstacles to actually making those investments are, No. 1, one of market timing. You're correct, we're making about 1.2 percent on our money right now, and I could probably double that amount by tying that money up in, say, a 4- or 5-year investment. But we believe, based on OMB projections, that if we wait until next year, we will be able to make substantially more than that. And while that's a sacrifice for this year, in the long run we think we can maximize our investments by not tying up large blocks of money

at 2 percent when, if we wait just a little bit, we can tie it up at 3.5 or 4.5 percent.

The other obstacle that we have right now is, while it has been strongly suggested to me that I should assume that the AML fee collection authority will be reauthorized, I should, therefore, tell Treasury that I have blocks of money available for long-term investments that, in fact, I don't have yet because I'm not willing to assume that we're going to have reauthorization of this fee collection authority.

So once we get reauthorization behind us, that will free up some rather substantial blocks of money and make that available for longer-term investments.

Mrs. CUBIN. One last question. What is your position on the Kanjorski bill that would allow Government-backed bonds to fund additional reclamation by the States?

Mr. JARRETT. To the best of my knowledge, that bill has not been vetted with OMB. I have personally read that bill and analyzed it somewhat. I'm in favor of any program that will bring additional resources to the problem of Abandoned Mine Lands. What I particularly like about the Kanjorski bill is—and he said it when he testified better than I can, but the AML program has a focus on the Priority 1 and 2 sites. The Kanjorski proposal would actually bring some money to those sites, but in some of the lower environmental problems as well, it takes a more comprehensive approach to resolving the problem than what we have the ability to do in the AML program. And what I find particularly attractive about that proposal is that it doesn't just deal with taking care of the environmental problems, but it actually promotes some economic development in some otherwise depressed communities.

Mrs. CUBIN. Thank you.

Mr. Rahall?

Mr. RAHALL. Thank you, Madam Chair. As we are so late in this hearing today and I know several have waited a long time, I am going to be very brief.

First, just a simple statement, Director Jarrett. I have been here a number of years and seen a number of Directors of OSM come and go, and I think one fact is pretty simple over those years: I don't envy your job.

With that, I do have two or three questions, all of which involve more technical facts and figures, which can just as easily be answered in writing. And I would ask unanimous consent that I submit those questions for the record and you respond to them in writing.

Mrs. CUBIN. Without objection.

Thank you very much, Mr. Jarrett. Also, I am sure other members of the Subcommittee will have some questions that they will send to you in writing, and the record will be held open for 10 days.

Thank you very much for your valuable testimony.

Mr. JARRETT. Thank you.

Mrs. CUBIN. Now I would like to call the third panel forward: Cecil E. Roberts, president of the United Mine Workers of America; John Masterson, Counsel to the Governor of Wyoming; Murray Balk, Chief, Surface Mining Section of the Kansas Department of

Health and Environment, Interstate Mining Compact Commission. If you would take your place at the table?

Mr. RAHALL. Madam Chair, I would like to have the courtesy of introducing members from my home State of West Virginia at this point. I appreciate your giving me that opportunity.

The first person I want to introduce is the first person on this panel, Mr. Cecil Roberts, who is the president of the greatest union on the face of the Earth, United Mine Workers of America. He is a sixth-generation coal miner and hails from my home State of West Virginia from a community called Cabin Creek, where he visits quite often and where his parents currently reside. He embodies the values which have made the Mine Workers the greatest union on the face of the Earth, and that is and has been the fact that he is in the forefront of fighting for the rights of his members, improving their working conditions, their general welfare, their health care, and their benefits. And I am proud that Cecil Roberts is a West Virginian, and I am proud myself to be an honorary member of the United Mine Workers of America.

The second individual I will introduce is on the next panel and is still in the audience, but I would just like to introduce him at this time, and that is Dave Young, with the BCOA. The Bituminous Coal Operators Association has a long and storied past, but it essentially comprised of unionized coal companies for the purpose of negotiating labor agreements with the mine workers. Dave also hails from my home State of West Virginia, coming from our State capital, Charleston. And, frankly, under his leadership, BCOA has in my view put on a more human face, and it has exhibited a greater degree of sensitivity under Dave Young's Chairmanship.

The BCOA in the past, for example, would never have asked to testify at a hearing of this nature, and Dave is not only here today to testify but has been here all afternoon and listening to the testimony, and we certainly appreciate him as well.

Thank you, Madam Chair.

Mrs. CUBIN. Thank you. And it is my honor to introduce John Masterson, who is representing the Governor of Wyoming, Dave Freudenthal.

Now, if you wouldn't mind to stand to be sworn in.

[Witnesses sworn.]

Mrs. CUBIN. I would like to begin by recognizing Mr. Roberts.

STATEMENT OF CECIL E. ROBERTS, PRESIDENT, UNITED MINE WORKERS OF AMERICA

Mr. ROBERTS. Thank you very much, Madam Chair. I want to first of all thank you for allowing us to be here today and for holding this hearing. We've had this opportunity to meet on your Subcommittee the last time, in the year 2000, when 12,000 of us came up to the Capitol grounds and had a very spirited rally with respect to preserving the health care of—at that time it was in the neighborhood of 60,000 beneficiaries. Today I come to speak for 46,000 beneficiaries of the Combined Benefit Fund, the average age being 80.

I want to thank my dear friend, if I may, Congressman Rahall, and he is a dear friend of mine, but, more importantly, he is a dear friend of all coal miners in southern West Virginia and, indeed,

this Nation and all working-class people, for that matter. He has fought for my health and safety as well as health care for our members for many, many years, and we appreciate that very much, Congressman Rahall.

Mrs. CUBIN. And, Mr. Roberts, I can tell you that I absolutely agree, and I admire Mr. Rahall for that commitment.

Mr. ROBERTS. We also come today—we didn't bring 12,000, but we did bring about 10 pensioners from northern West Virginia, who are in the back to my immediate—over my left shoulder, and from Pennsylvania, who are very much concerned about preserving these health care benefits.

We have submitted written testimony, but I would take a few moments to try to summarize this issue, if I might.

The U.S. Government has been involved in providing health care to coal miners since 1946, when there was a dispute between the United Mine Workers and the coal operators, and the Federal Government seized the coal mines in 1946, and the first contract between the union and anyone providing for pensions and health care was with the Federal Government, not with the coal industry. So the Government made a promise back in 1946 to the people we're talking about today.

The second time that I recall that the Federal Government made a promise and a commitment and a finding to coal miners and their beneficiaries was immediately after and during the 1989 lengthy Pittston Coal strike, when then-President Bush appointed through then-Secretary of Labor Elizabeth Dole, now Senator Elizabeth Dole from North Carolina, to get involved in this problem, and she helped resolve that strike. That continued the health care benefits and the pension benefits for 1,600 Pittston beneficiaries.

She went on to appoint Bill Usery, a former Secretary of Labor under Richard Nixon, to chair what was known then as a coal commission in some circles and the Dole Commission in other circles. It was chaired by former Secretary of Labor Usery, and on that Committee you had coal operators, you had union representatives, and you had business people throughout the United States, particularly from the coal regions. And they found at that time that indeed the U.S. Government had promised coal miners back in 1946 and continued that promise up until 1992 at that time lifetime health care. They recommended that Congress act, and Congress did in 1992, passing what has become well known as the Coal Act.

In that Coal Act, there was a funding mechanism established by Congress, and Congress felt at the time that they would never, ever have to deal with the issue again. However, the constitutionality of the Coal Act was challenged on over 60 occurrences, and each time the Federal Government prevailed or the funds prevailed.

This issue has been taken to the United States Supreme Court about four times, and the Supreme Court has found indeed that this Act is constitutional.

However, we come with a crisis looming as we gather here today, and I must urge on Congress today how important it is to act, and act soon. The Combined Benefit Fund is currently running a deficit of about \$10 million. At the end of the fiscal year, which will be

October 1st, that deficit will be \$40 million. If funding is not appropriated between now and the 1st of next year, a very severe benefit cut will have to take place, in the neighborhood of 40 percent by some analysis.

These promises were made to these coal miners and their beneficiaries. Most of these people now are widows of former miners who made this country, as many have said, the greatest generation on Earth, which I happen to agree with.

We recommend about three to four things for you to consider, Madam Chairman.

First of all, we support Congressman Rahall and Congressman Ney's bipartisan effort to see that these benefits are not cut with the passage of CARE 21. Two years ago this passed the House. It did not pass the Senate. Dealing with the issue about the interest rate, which has created a severe problem, currently the U.S. Government allows what is known as par value specials in some of their funds, such as Social Security. The Congress could authorize the Treasury to place these investments in par value specials which would triple the interest rate that is currently being provided, which would go a long ways to resolving this problem.

Third, we would encourage a debate to begin soon on reauthorization of the AML fee, and I assume that's somewhat what we're doing today. But this is a bipartisan approach that has been proposed by Congressman Rahall and Congressman Ney. This would allow benefits to continue.

One of the things I would stress, Madam Chairman, is there's stranded interest money that is there now that cannot be used to pay these benefits because of a technicality. We urge Congress to pass CARE 21, which would allow the utilization of that stranded interest money to pay these benefits so that these people, average age 80, some as old as 100, would continue to receive their benefits that this Government, the greatest Government on Earth, the greatest Nation on Earth, can keep their promises that they made in 1946.

Thank you very much, Madam Chairman.

[The prepared statement of Mr. Roberts follows:]

**Statement of Cecil E. Roberts, President,
United Mine Workers of America**

Madam Chairman, members of the Subcommittee, I am Cecil E. Roberts, President of the United Mine Workers of America (UMWA). The UMWA is a labor union that has represented the interests of coal miners and other workers and their families in the United States and Canada for over 113 years. We appreciate the opportunity to appear before the Subcommittee once again to discuss the Abandoned Mine Land Reclamation Fund (AML Fund) and its relationship to the UMWA Combined Benefit Fund (CBF).

Madam Chairman, I would like to spend my time today talking about the continuing financial crisis at the UMWA Combined Benefit Fund. The CBF was created by Congress to provide health benefits to retired coal miners and their widows. Today, the Combined Benefit Fund provides health benefits to about 46,000 elderly beneficiaries who reside in every state in the nation, including significant numbers who are constituents of members of this Subcommittee. The average age of the CBF beneficiary population is nearly 80 years, about two-thirds of them are widows and their total estimated health cost for the current fiscal year is \$362 million. Congress intended for the financial mechanisms it put in place to provide for self-sufficient financing of the cost of those benefits. However, rapidly rising health costs and a series of adverse court decisions have eroded those financing mechanisms and placed the CBF in financial jeopardy. More recently the bankruptcies of several

major steel companies that had significant numbers of Coal Act retirees have added to the financial distress of the CBF.

Congress has intervened three times in the past four years to shore up the financial condition of the CBF through emergency appropriations of interest money from the AML Fund. In December 1999, Congress provided \$68 million to cover shortfalls in CBF premiums. In October 2000, Congress appropriated up to \$96.8 million to cover any deficit in the CBF's net assets through August 31, 2001. And most recently, in January 2003, Congress appropriated \$34 million from the AML interest account to the Combined Benefit Fund. In addition, the UMWA Funds and the Health Care Financing Administration (now the Center for Medicare and Medicaid Services) expanded their existing nationwide, risk-sharing Medicare Demonstration project in January 2001 to include a new prescription drug component. That project runs for three years, until mid-2004, and reimburses the Funds for 27% of its Medicare prescription drug expenditures. It is a pilot project designed to demonstrate the efficacy of providing prescription drugs under Medicare, a timely project that we believe will prove useful to the government as it seeks to expand prescription drug coverage to the Medicare population.

But despite these efforts by Congress and the Executive Branch, the CBF still faces a financial crisis. Net assets have declined since the last emergency appropriation was enacted; as of May 31, 2003, the CBF had a net asset deficit of \$7.8 million. We expect to end the fiscal year on September 30, 2003 with a net asset deficit of about \$40 million. There is an urgent need for additional revenue to prevent a disastrous cut in benefits to this fragile population. Indeed, the CBF estimates that absent additional appropriations from Congress, the CBF will exhaust its cash early next year.

In order to avoid a catastrophic cut in benefits, the UMWA strongly urges Congress to:

- enact H.R. 313, the Coal Accountability and Retired Employee Act for the 21st Century (CARE 21);
- authorize the AML fund to invest in Treasury par value specials;
- begin serious debate on reauthorization of the AML fee, currently scheduled to expire September 30, 2004.

The UMWA strongly supports H.R. 313, a bill with broad bi-partisan support, sponsored by Congressmen Nick Rahall and Bob Ney. As you know, CARE 21 was passed by the full House of Representatives last fall, but the Senate did not complete action on the bill. If enacted, CARE 21 would authorize the use of stranded AML interest money to cover future net asset deficits in the CBF. The Rahall/Ney proposal does not affect the principal in the AML account.

The UMWA supports this legislative effort because we know that a promise was made by the Federal Government and by the coal industry that these retirees would have lifetime health benefits. Today we need the help of Congress to ensure that the promise is kept. We are not alone in urging Congress to act. As I advised the Subcommittee three years ago, a number of state legislatures in coal field states (Alabama, Illinois, Indiana, Kentucky, Pennsylvania and West Virginia), along with dozens of county and city governments, have adopted resolutions urging Congress and the Administration to ensure that retired miners continue to receive the health benefits they were promised. These state and local political authorities know how important the UMWA Funds is to their state's medical infrastructure and how necessary the health benefits are to the retirees and their families.

These Coal Act beneficiaries have supported this nation in war and in peace, and today ask for simple fairness and the keeping of a simple promise. As you consider legislative amendments dealing with the Office of Surface Mining and the AML Fund, I ask that you keep the retired miners and their widows in mind. I can think of no higher purpose for monies collected from the coal industry than to ensure that America's retired miners not be abandoned.

A second recommendation is that Congress authorize the AML fund to invest in par value specials. One problem that has exacerbated the CBF financial woes is that very low interest rates have significantly reduced the interest earned on the AML fund. For example, last September, the CBF billed AML \$78.6 million for the current fiscal year; AML transferred only \$56.1 million. This year, interest earned at AML is expected to be in the range of about \$25 million, far short of CBF needs. The AML funds essentially are invested at overnight interest rates, rather than in long term government bonds. We have urged OSM officials to move out further on the yield curve to earn greater interest. They argue that they must maintain the fund at maximum liquidity because Congress could appropriate some or all of the AML principal at any time. One way to remain liquid while earning greater interest is through the use of Treasury par value specials, nonmarketable Treasury securities that can be redeemed at any time at their face, or "par" value. They are a pre-

ferred investment vehicle, offered only to certain government trust funds, such as Social Security, Medicare, the Railroad Retirement fund and the Civil Service Retirement fund, because they essentially are short term securities that earn long term rates. We believe that it would be appropriate for Congress to authorize the use of par value specials at the AML fund.

Our third recommendation is that Congress begin the debate on reauthorization of the AML fee, currently set to expire September 30, 2004. Congress established the AML Fund as part of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The fund, financed by production fees levied on the coal industry, was designed to provide the means to reclaim lands that had been mined in previous years and abandoned before reclamation had been done. The law was amended in 1991 to permit the investment of monies held in the AML Fund to earn interest. In 1992, the Energy Policy Act extended the AML fees until 2004 and authorized the use of AML interest to pay for the cost of benefits for certain eligible retirees under the Coal Act.

Madam Chairman, let me state clearly that the UMWA supports the goals of the Surface Mining Act and the Abandoned Mine Lands program. In enacting SMCRA, Congress found that "surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner." That statement is as true today as it was in 1977. Coal mining contributes significantly to our national economy by providing the fuel for over half of our nation's electricity generation. Coal miners are proud to play their part in supplying our nation with domestically-produced, cost-effective, reliable energy. We also live in the communities most affected by mining and support the intent of Congress that coal mining must be conducted in an environmentally sound manner.

The UMWA believes that when Congress authorized the use of AML interest to finance the cost of benefits for retired coal miners under the Coal Act, that it was a logical extension of the original intention of Congress when the AML Fund was created. When Congress created the AML Fund in 1977, it found that un-reclaimed, abandoned mine lands imposed "social and economic costs on residents in nearby and adjoining areas." When Congress enacted the Coal Act in 1992, it also had in mind how to avoid unacceptable social and economic costs associated with the loss of health benefits for retired coal miners and widows.

Recent GAO Study

Last year the U.S. General Accounting Office (GAO) issued its most recent report that supports the CBF's need for financial support. In August the GAO issued a report on the Coal Act funds entitled "Retired Coal Miners' Health Benefit Funds: Financial Challenges Continue." The report was an outgrowth of Senate Finance Committee consideration of legislation to provide transfers of monies from the U.S. Treasury to the CBF in 2000.

Among the findings of the GAO were that:

- the CBF beneficiaries traded lower pensions over the years for the promise of their health benefits and have engaged in considerable cost sharing by contributing \$210 million of their pension assets to help finance the CBF;
- the benefits provided to Coal Act beneficiaries are generally comparable to coverage provided by major manufacturing companies and companies with unionized work forces;
- the Combined Benefit Fund faces continuing financial challenges which have been exacerbated by various adverse court decisions that have reduced the per beneficiary premiums paid to the CBF and relieved some companies of responsibility for paying for their beneficiaries;
- the CBF beneficiaries tend to be sicker, and therefore use more health care, than the average Medicare population; and
- the CBF trustees have adopted numerous managed care initiatives and have a history of achieving savings against their Medicare targets in their demonstration projects, thus saving money not only for the Funds but for Medicare and the U.S. Treasury.

The most recent GAO report, and GAO's earlier reports on the CBF, clearly supports the positions we have taken before this Subcommittee and the Congress. A promise made in the White House in 1946 was reaffirmed in 1992. Congress intended the Coal Act to be self-sustaining and self-financing, but subsequent court decisions have eroded that financing. There is no question that this is an elderly, frail population that is sicker than the general Medicare population and deserves the benefits they were promised. There is also no question that the Funds have aggressively managed the benefit plans and instituted state-of-the-art managed care programs that aim to improve the quality of care and reduce costs. Indeed, we esti-

mate that the Funds programs have saved approximately \$100 million in the last four years as a result of its risk-sharing agreements, with about \$70 million of the savings returned to Medicare and about \$30 million going to the Funds. Unfortunately, there is also no question that the nation's commitment to appropriate health care for retired coal miners will be violated if the CBF does not receive additional funds.

This is a unique population and a unique situation. I am unaware of any other case in which a major industry-wide health and welfare plan in the private sector was created in a contract between the Federal Government and the workers. All three branches of our government have played substantial roles in creating, shaping and determining the fate of the UMWFA Funds. The General Accounting Office clearly laid out the financial difficulties facing the Funds and more recent actuarial projections show that Congress must act in order to shore up the financial structure. Again, we encourage members of Congress to enact H.R. 313, or CARE 21 and to authorize the use of par value specials by the AML fund.

Madam Chairman, I mentioned that the UMWFA Funds was a unique institution with a unique history of government involvement. I would like to review briefly the highlights of that history.

The UMWFA Health and Retirement Funds and the U.S. Government

The UMWFA Health and Retirement Funds (the Funds) was created in 1946 in a contract between the United Mine Workers of America and the Federal Government during a time of government seizure of the mines. The contract was signed in the White House with President Harry Truman witnessing the historic occasion.

The UMWFA first began proposing a health and welfare fund for coal miners in the late-1930s but met strident opposition from the coal industry. During World War II, the Federal Government urged the union to postpone its demands to ensure coal production for the war effort. When the National Bituminous Wage Conference convened in early 1946, immediately following the end of the war, a health and welfare fund for miners was the union's top priority. The operators rejected the proposal and miners walked off the job on April 1, 1946. Negotiations under the auspices of the U.S. Department of Labor continued sporadically through April. On May 10, 1946, President Truman summoned John L. Lewis and the operators to the White House. The stalemate appeared to break when the White House announced an agreement in principle on a health and welfare fund.

Despite the White House announcement, the coal operators still refused to agree to the creation of a medical fund. Another conference at the White House failed to forge an agreement and the negotiations again collapsed. Faced with the prospect of a long strike that could hamper post-war economic recovery, President Truman issued an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines in the United States and to negotiate with the union "appropriate changes in the terms and conditions of employment." Secretary of the Interior Julius Krug seized the mines the next day. Negotiations between representatives of the UMWFA and the Federal Government continued, first at the Interior Department and then at the White House, with President Truman participating in several conferences.

After a week of negotiations, the historic Krug-Lewis agreement was announced and the strike ended. It created a welfare and retirement fund to make payments to miners and their dependents and survivors in cases of sickness, permanent disability, death or retirement, and other welfare purposes determined by the trustees. The fund was to be managed by three trustees, one to be appointed by the Federal Government, one by the UMWFA and the third to be chosen by the other two. Financing for the new fund was to be derived from a royalty of 5 cents per ton of coal produced.

The Krug-Lewis agreement also created a separate medical and hospital fund to be managed by trustees appointed by the UMWFA. The purpose of the fund was to provide for medical, hospital, and related services for the miners and their dependents. The Krug-Lewis agreement also committed the Federal Government to undertake "a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in coal mining areas." The expressed purpose was to determine what improvements were necessary to bring coal field communities in conformity with "recognized American standards."

To conduct the study, the Secretary chose Rear Admiral Joel T. Boone of the U.S. Navy Medical Corps. Government medical specialists spent nearly a year exploring the existing medical care system in the nation's coal fields. Their report, "A Medical Survey of the Bituminous Coal Industry," found that in coal field communities, "provisions range from excellent, on a par with America's most progressive communities, to very poor, their tolerance a disgrace to a nation to which the world looks for

pattern and guidance." The survey team discovered that "three-fourths of the hospitals are inadequate with regard to one or more of the following: surgical rooms, delivery rooms, labor rooms, nurseries and x-ray facilities." The study concluded that "the present practice of medicine in the coal fields on a contract basis cannot be supported. They are synonymous with many abuses. They are undesirable and in many instances deplorable."

Thus the Boone report not only confirmed earlier reports of conditions in the coal mining communities, but also established a strong Federal Government interest in correcting long-standing inadequacies in medical care delivery. Perhaps most important, it provided a road map for the newly created UMWA Fund to begin the process of reform.

The Funds established ten regional offices throughout the coal fields with the direction to make arrangements with local doctors and hospitals for the provision of "the highest standard of medical service at the lowest possible cost." One of the first programs initiated by the Funds was a rehabilitation program for severely disabled miners. Under this program more than 1,200 severely disabled miners were rehabilitated. The Funds searched the coal fields to locate disabled miners and sent them to the finest rehabilitation centers in the United States. At those centers, they received the best treatment that modern medicine and surgery had to offer, including artificial limbs and extensive physical therapy to teach them how to walk again. After a period of physical restoration, the miners received occupational therapy so they could provide for their families.

The Funds also made great strides in improving overall medical care in coal mining communities, especially in Appalachia where the greatest inadequacies existed. Recognizing the need for modern hospital and clinic facilities, the Funds constructed ten hospitals in Kentucky, Virginia and West Virginia. The hospitals, known as Miners Memorial Hospitals, provided intern and residency programs and training for professional and practical nurses. Thus, because of the Funds, young doctors were drawn to areas of the country that were sorely lacking in medical professionals. A 1978 Presidential Coal Commission found that medical care in the coal field communities had greatly improved, not only for miners but for the entire community, as a result of the UMWA Funds. "Conditions since the Boone Report have changed dramatically, largely because of the miners and their Union—but also because of the Federal Government, State, and coal companies." The Commission concluded that "both union and non-union miners have gained better health care from the systems developed for the UMWA."

The Coal Commission

Medical benefits for retired miners became a sorely disputed issue between labor and management in the 1980s, as companies sought to avoid their obligations to retirees and dump those obligations onto the UMWA Funds, thereby shifting their costs to other signatory employers. Courts had issued conflicting decisions in the 1980s, holding that retiree health benefits were indeed benefits for life, but allowing individual employers to evade the obligation to fund those benefits. The issue came to a critical impasse in 1989 during the UMWA-Pittston Company negotiations. Pittston had refused to continue participation in the UMWA Funds, while the union insisted that Pittston had an obligation to the retirees.

Once again the government intervened in a coal industry dispute over health benefits for miners. Secretary of Labor Elizabeth Dole appointed a special "super-mediator," Bill Usery, also a former Secretary of Labor. Ultimately the parties, with the assistance of Usery and Secretary Dole, came to an agreement. As part of that agreement, Secretary Dole announced the formation of an Advisory Commission on United Mine Workers of America Retiree Health Benefits, which became known as the "Coal Commission." The commission, including representatives from the coal industry, coal labor, the health insurance industry, the medical profession, academia, and the government, made recommendations to the Secretary and the Congress for a comprehensive resolution of the crisis facing the UMWA Funds. The recommendation was based on a simple, yet powerful, finding of the commission:

"Retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives, and that is how they planned their retirement years. That commitment should be honored."

The underlying recommendation was that every company should pay for its own retirees. The Commission recommended that Congress enact Federal legislation that would place a statutory obligation on current and former signatories to the National Bituminous Coal Wage Agreement (NBCWA) to pay for the health care of their former employees. The Commission recommended that mechanisms be enacted that would prevent employers from "dumping" their retiree health care obligations on the

UMWA Funds. Finally, the Commission urged Congress to provide an alternative means of financing the cost of “orphan retirees” whose companies no longer existed.

The Coal Act

Recognizing the crisis that was unfolding in the nation’s coal fields, Congress acted on the Coal Commission’s recommendations. The original bill introduced by Senator Rockefeller sought to impose a statutory obligation on current and former signatories to pay for the cost of their retirees in the UMWA Funds, required them to maintain their individual employer plans for retired miners, and imposed a small tax on all coal production to pay for the cost of orphan retirees. Although the bill was passed by both houses of Congress, it was vetoed as part of the Tax Fairness and Economic Growth Act of 1992.

In the legislative debate that followed, much of the underlying structure of the Coal Commission’s recommendations was maintained, but there was strong opposition to a general coal tax to finance orphan retirees. A compromise was developed that would finance orphans through the use of interest on monies held in the Abandoned Mine Lands (AML) fund. In addition, the Union accepted a legislative compromise that included the transfer of \$210 million of pension assets from the UMWA 1950 Pension Plan. With these compromises in place, the legislation was passed by the Congress and signed by President Bush as part of the Energy Policy Act.

Under the Coal Act, two new statutory funds were created—the UMWA Combined Benefit Fund (CBF) and the UMWA 1992 Benefit Fund. The former UMWA 1950 and 1974 Benefit Funds were merged into the Combined Fund, which was charged with providing health care and death benefits to retirees who were receiving benefits from the UMWA 1950 and 1974 Benefit Plans on or before July 20, 1992. The CBF was essentially closed to new beneficiaries. The Coal Act also mandated that employers who were maintaining employer benefit plans under UMWA contracts at the time of passage would be required to continue those plans under Section 9711 of the Coal Act. Section 9711 was enacted to prevent future “dumping” of retiree health care obligations by companies that remain in business. To provide for future orphans not eligible for benefits from the CBF, Congress established the UMWA 1992 Benefit Fund to provide health care to miners who retired prior to October 1, 1994 and whose employers are no longer providing benefits under their 9711 plans because they have gone out of business. I mentioned earlier the bankruptcies of a number of steel companies that had retirees covered by the Coal Act. Bankruptcies at LTV, Bethlehem Steel, National Steel and other steel companies have reduced the premiums paid to the CBF, increased orphan costs for the AML fund, and added thousands of 9711 plan beneficiaries to the 1992 Plan.

The Combined Fund is financed by a per-beneficiary premium paid by employers with retirees in the fund. The premium is set by the Social Security Administration and is escalated each year by the medical component of the Consumer Price Index. Interest earned by the AML Fund is made available to finance the cost of orphan retirees. The UMWA 1992 Fund is financed solely by operators that were signatory to the NBCWA of 1988. In the fiscal period 2000-2002, premium income paid by employers to the CBF averaged \$91.8 million per year, or 26.3% of total income and the AML transfers averaged \$108.3 million, or 31.1%. The AML figure includes annual transfers and emergency Congressional appropriations. The remainder of CBF income derives from Medicare capitation and risk sharing arrangements, DOL Black Lung payments, investment income and miscellaneous court settlements.

In passing the Coal Act, Congress recognized the legitimacy of the Coal Commission’s finding that “retired miners are entitled to the health care benefits that were promised and guaranteed them.” Congress specifically had three policy purposes in mind in passing the Coal Act:

- “(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry;
- (2) to allow for sufficient operating assets for such plans; and
- (3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.”

Without question Congress intended that the Coal Act should provide “sufficient operating assets” to ensure the continuation of health care to retired coal miners. So what went wrong? How is it that a decade after passing the Coal Act we find ourselves in a continuing financial crisis?

Recent Court Decisions

The 2002 GAO study found that a number of court decisions have eroded the financial condition of the Combined Fund and the legal onslaught on the Coal Act continues. While Congress clearly intended that the Coal Act be financially self-sustaining, various court decisions have undercut Congressional intent. A 1995 decision by a Federal court in Alabama in *NCA v. Chater* overturned the premium determination by the Social Security Administration (SSA) and reduced the premium paid by employers by about 10%. Over time, the effect of this decision is to remove hundreds of millions of dollars from the financing structure of the Coal Act. A 1999 decision by the same court ordered the CBF to return about \$40 million in contributions to the employers, representing the difference between the original SSA premium rate actually paid and the rate established in NCA. The trustees of the CBF filed suit against the Social Security Administration in the District of Columbia in an attempt to set aside the NCA decision. In late-2002 the D.C. Court struck down the Social Security Administration's nationwide application of the NCA decision and ordered SSA to report to the Court what premium rate should apply to companies not covered by the NCA decision. In June, SSA notified the Court that it would apply a higher premium to companies not covered by the earlier decision. However, over 200 companies have filed another action in Alabama asking to avoid paying the higher rate.

In 1998, the Supreme Court rendered a decision in *Eastern Enterprises* that struck down the obligation to contribute to the CBF for companies that were signatory to earlier NBCWAs but did not sign the 1974 or later contracts. Those employers were relieved of their contribution obligations in the future and the Combined Fund returned millions of dollars in prior contributions. Most of these retirees are now part of the unassigned beneficiary pool whose benefits are funded from other sources. Since that time, a number of other companies who signed the 1974 or later NBCWAs have also attempted to convince the courts that they, too, should be relieved of their responsibility. I am pleased to report that most of these cases have now completed their appeals process, with the courts holding that the companies cannot walk away from their Coal Act obligations.

More recently, a court decision in *Dixie Fuels* ruled that original determinations of responsible operator status could not be made by the Social Security Administration after October 1, 1993. If this ruling had been applied nationwide, it would have relieved a number of operators of the responsibility to pay for their retirees and create more orphans that would have to be financed from the AML Fund. There was a split in interpretation of this issue between the circuit courts of appeals, with the 6th Circuit ruling that SSA improperly made assignments after October 1993 and the 3rd and 4th Circuits ruling that such assignments were not improper. The Supreme Court granted review in these cases and ruled in *Barnhart v. Peabody* that the October 1, 1993 statutory date was intended by Congress to spur SSA to action, but did not relieve operators of their responsibility if assignments were made after that date.

The cumulative effect of these court decisions threatened a repetition of the problems and recreation of the crisis of the 1980s that led to the creation of the Coal Act—employers are being relieved of liability for their retirees and revenues are being significantly reduced from the employers that remain obligated. Compounding the revenue loss stemming from these court decisions is the fact that the escalator used to adjust the premium for inflation (the medical component of the Consumer Price Index) is inadequate to measure the health care cost increases in a closed group of aging beneficiaries who experience annual increases in utilization. The combination of loss of income and an inadequate escalator have led to an imminent financial crisis for the Combined Fund and its beneficiaries.

The Financial Crisis Must Be Averted

Madame Chairman, Congress must act now to avoid a disastrous loss of benefits for this fragile population. Over their working lives, they traded lower wages and pensions for the promise of retiree health care that began in the White House in 1946. In 1992, they willingly contributed \$210 million of their pension money to ensure that the promise would be kept. Everything that this nation has asked of them—in war and in peace—they have done. They are part of what has come to be called the “Greatest Generation” and in that assessment I wholeheartedly concur. They have certainly kept their end of the bargain that was struck with President Truman. But now they find that the promise they worked for and depended on is in jeopardy of being broken. We must stand up and say that this promise will be kept.

We can do so by enacting the CARE 21 proposal that has been introduced by Congressmen Rahall and Ney with bipartisan support. We urge members to co-sponsor H.R. 313 and to actively seek its enactment in the House of Representatives.

Madam Chairman, I thank you for the opportunity to address the Subcommittee today. I would be happy to answer any questions you may have.

Mrs. CUBIN. Thank you, Mr. Roberts.
I would now like to recognize Mr. Masterson.

**STATEMENT OF JOHN A. MASTERSON, COUNSEL TO THE
GOVERNOR OF WYOMING**

Mr. MASTERSON. Thank you, Madam Chair. May it please the Committee, my name is John Masterson. I'm here today on behalf of Governor Freudenthal, the Governor of Wyoming. I'm his legal counsel and also the Federal-State relations coordinator for the State of Wyoming.

I want to thank the Committee for considering the perspective of the coal-producing States, and I want to state that the Governor of Wyoming, from his perspective we are ready, willing, and able to meet anytime and anywhere to help resolve these issues, to discuss them, and to try to be of assistance to this Committee in resolving these issues.

If I may also, Madam Chair, I'd like to thank your staff and the staff of this Committee for their help as well. They've been very helpful on short notice to try to give me some semblance of organization. So I thank them for that.

Madam Chair, as the hour is late, I'll cut to the proverbial chase. Wyoming's biggest issue is the failure of the Federal Government to remit 50 percent or the State share of monies to the State of Wyoming. For example, as we indicate in our written testimony, the State has received only 29 percent of its fees collected since the approval of Wyoming's reclamation plan in 1983. In 2002, for example, Wyoming producers paid in over \$126 million, yet Wyoming's AML program received only \$28 million in distributions. That's approximately 23 percent of money Wyoming contributed when under law, and from my reading of the law, we are entitled to half of that.

In addition, the AML Trust Fund now contains almost \$1.5 billion, of which \$972 million is the States and tribals share. By law, that money should be distributed back to the States and its share, not because we demand it, not because we claim it, but because it must be distributed under the statutes and the CFRs.

In sum, through fiscal year 2002, Wyoming coal companies have paid over \$1.63 billion into the fund, and less than 30 percent of those collections have been returned to the State of Wyoming. That approximates about \$468 million, leaving a balance of over \$374 million of Wyoming's State share residing in the AML Fund.

The State of Wyoming recognizes the obligations to the Combined Benefit Funds. We recognize that these promises must be kept, and we encourage this Committee to come up with solutions to that. And we agree that those funds should be—could be preserved and should be paid out as the promises were made.

I would note that Wyoming has seen an increasing number of hazardous incidents. We do have our own interest in Priority 1 and Priority 2 sites. Our internal inventory has about \$50 million in remaining P1 and P2 sites, in coal-based sites, and there are an addi-

tional approximately 1,200 projects that would involve AML funds and need those funds.

Our proposal, Madam Chair, is set forth, and I'll just summarize it briefly.

First of all, it would be to make a fact-based determination of the appropriate level of tax to be charged on surface, underground, and lignite coal. We believe that these rates were arbitrarily set 26 years ago when this fund was established, and substantial changes in technology and the mining industry lead us to the belief that those fees need to be reassessed and re-established.

Again, accept that the Combined Benefit Fund commitment needs to go forward. We would recommend adjusting the allocation formula to increase allocations to certified States, such as Wyoming, while diverting all available excess, including RAMP funds and those associated with belt-tightening at OSM, to solve historical coal problems.

The final issue that we have is the request that, in addition, going forward Wyoming again receive its share of AML monies. There is a substantial amount of funds there that we believe we are entitled to. We would recommend some other issues. In our written testimony, we state that our recommendation would be to eliminate the Rural Abandoned Mine Program. We have heard anecdotally that approximately 25 percent of OSM's money goes toward administration. If true, we believe that that's probably in excess of what it should be. Wyoming's administration costs on AML is approximately 3.5 to 4.5 percent of the amount of money it receives.

We would recommend the creation of an independent funding source for the CBF shortfall, and we would also recommend that the AML take its distribution—or its appropriations off-budget.

Thank you for your time, Madam Chair.

[The prepared statement of Mr. Masterson follows:]

**Statement of John A. Masterson, Counsel to
The Honorable David D. Freudenthal, Governor, State of Wyoming**

INTRODUCTION

Good morning, Madam Chairwoman. My name is John A. Masterson, and I am the legal counsel to Governor David D. Freudenthal of the State of Wyoming. I have been invited here today to speak briefly on the reauthorization of the Surface Mining Control and Reclamation Act (SMCRA) and the Abandoned Mineral Lands Fund, from the perspective of Wyoming, our nation's largest producer of coal and, therefore, the nation's largest source of AML funds. I commend you for your willingness to hear from representatives of coal-producing states about this important issue. We stand ready to work with Congress in addressing the shortcomings of SMCRA and the need to distribute AML funds. On behalf of Governor Freudenthal, I wish to thank the members of the Subcommittee on Energy and Mineral Resources of the House Committee on Resources and Chairwoman Barbara Cubin for inviting the State of Wyoming to testify at this hearing today.

HISTORY

When the Surface Mining Control and Reclamation Act was enacted in 1977, it included a fee on coal production. Proceeds from the fee were placed in the Abandoned Mine Land (AML) fund. By law, one-half of the fees collected in each state or on tribal lands were to be returned to the state or tribe of origin. The other half of the collections were to be spent at the discretion of the Secretary of the Interior to address reclamation issues of national importance. All AML expenditures, including state and tribal shares and the OSM's allocation, are subject to the Federal budgeting process and annual appropriation by Congress.

Despite the bill's intent and the clear mandate of law, Congress has never appropriated to states and tribes the 50% of fee collections guaranteed in the law. Wyoming, for example, has received only 29% of fees collected in our state since the approval of Wyoming's reclamation plan in 1983. This refusal of the Federal Government to discharge its obligations to the states is of grave concern to Wyoming.

In addition to the failure to allocate these funds, the unappropriated pool of money became an irresistible source of substantial interest income. As a result, SMCRA was amended by the Coal Act of 1992 to allocate that interest to mitigate deficits in the United Mine Workers Combined Benefit Fund (CBF). This diversion of interest deprives the states and tribes of an additional \$70 million in annual revenue that could have been used to remediate the public safety hazards of unreclaimed mine sites. The potential to add additional beneficiaries to CBF coverage is another concern to Wyoming, as it would further reduce the pool of funds available to meet the original intent of SMCRA.

We are very concerned that Wyoming's coal producers will be asked to bear the largest burden of AML fee collections without the return of an equitable portion of those funds to Wyoming. In 2002, Wyoming producers paid in over \$126 million; yet, Wyoming's AML program received only \$28 million in distributions. That's only 23% of the money Wyoming contributed, while other states have received 40%, 50% and even over 100% of their contributions.

Appropriations from Congress to address AML problems in Wyoming and other coal states are constrained by budget ceilings established by Office of Management and Budget. Annual AML distributions to states and tribes have never reached the 50% of AML fee collections mandated by Congress in SMCRA. As a result, the AML Trust Fund now contains almost \$1.5 billion, of which \$972 million is the states' share balance, which by law should have been distributed to AML states and tribes.

Through Fiscal Year 2002, Wyoming coal companies have paid over \$1.637 billion into the fund. Less than 30% of these collections have returned to the State. Wyoming has received only \$468.5 million in annual allocations. Over \$374 million of Wyoming's state share resides in the AML fund. This money—now idle in the Federal account—could be put to productive use reclaiming hazardous mine sites and mitigating the deleterious effects of mining and mineral processing activities in Wyoming communities.

OBLIGATIONS TO COMBINED BENEFITS FUND

The 1992 Coal Act shifted the AML Trust Fund interest away from reclamation and towards the social needs of United Mine Workers' dependents and the desires of the bituminous coal operators by subsidizing shortfalls in the Combined Benefits Fund (CBF). These social priorities have steered AML funds away from the needs of states and tribes, especially those states that produce the lion's share of the Nation's coal. Wyoming is here today to remind you of the obligations of law adopted as part of SMCRA in 1977. States and tribes are to receive one-half of AML fee collections within their borders. The Federal Government has not lived up to this law, and appears to be moving even further from its original commitments under pressure from smaller, perhaps more vocal, constituencies.

Wyoming recognizes the Federal Government's obligations to the Combined Benefit Fund and accepts that the promises made to the miners who produced the energy to fuel America's industrial development must be kept. Wyoming encourages Congress to consider creative alternative funding mechanisms which would sever CBF dependency from AML revenues and allow those funds to be applied to the priorities established by Congress. The United Mine Workers Combined Benefits Fund is a health care problem that should not be resolved in the context of the AML fund debate. If the CBF funding remains a part of the AML obligations, then Wyoming suggests that the unpaid Trust Fund balance due the states be used to fund the required benefits going forward.

WYOMING PRIORITIES AND REMAINING WORK

Wyoming still has a substantial inventory of Priority 1 and Priority 2 coal and noncoal sites that must be reclaimed to ensure a safe environment for Wyoming citizens. The reclamation of highwalls, pits, mine openings, coal fires, subsidence features and other hazards must be addressed. Wyoming's history of coal production, first to fuel the transcontinental railroad and later for power generation, has left a legacy of underground coal mines and future hazards. Each year, Wyoming sees an increasing number of hazardous subsidence features in schoolyards, fairgrounds, public recreation areas, and close by public roads, railroads and power transmission lines. These features will be a danger to Wyoming citizens and visitors to our state for years to come. Funds must be available into the future to address these inevitable hazards.

While a “certified” state, Wyoming has eligible mine-related hazards awaiting reclamation. Wyoming’s internal inventory has about \$50 million in remaining P1 and P2 coal sites and \$60 million in remaining non-coal sites. There are an additional 1,200 projects that will be added to our inventory as soon as the cost estimates are completed. Community infrastructure work also remains a significant problem facing our state.

In addition, Wyoming vast coal reserves are constantly threatened by mine fires and coal seam fires. One grass fire in 2002 ignited 56 coal seam fires on Federal, state, and private land in one Wyoming county. The Bureau of Land Management and private landowners have repeatedly requested assistance from Wyoming AML to suppress in situ coal seam fires. The prolonged drought in Western states means that Wyoming will see continued multiple occurrences of mine fires and in situ seam fires. Wyoming AML is currently monitoring two dozen mine fires in various areas of the state, including one within a few hundred yards of a residential and commercial area of the Town of Kemmerer. While the cost of containment of these fires cannot be accurately determined, estimates range from \$1 million to \$10 million per fire.

WYOMING’S PROPOSAL

Wyoming has reviewed the various proposals to amend SMCRA to extend fee collections and modify program guidelines and conditions. As of today, none of these alternatives has been introduced in Congress. Rather than respond to the proposals of other interests, allow us to candidly state Wyoming’s concerns for you.

Frankly, Wyoming’s interests would be best served by termination of the reclamation fee. The advantages to Wyoming’s economy of allowing the fee to expire outweigh benefits derived from the distribution of AML funds. This is especially true since Congress has not appropriated the 50% share promised in SMCRA and shows no inclination to release Wyoming’s share of the AML trust fund. In our view, extending this tax also amounts to the continuation of a selective tax on a single industry and the citizens consuming energy from this industry. The problem this tax is designed to address—abandoned mine lands from prior generations—is a national legacy and should be remedied by the expenditure of general revenues rather than a selective tax.

Wyoming recognizes, however, the unfortunate reality that this tax will be extended in some form. Therefore, we ask you consider the following as you move forward:

- Make a fact-based determination of the appropriate level of tax to be charged on surface, underground, and lignite coal. Evaluate the respective rates with a view towards lessening the overall tax burden, as well the particular tax burden, inflicted upon Wyoming’s coal industry. Rates were arbitrarily set at the time the tax was established, and in the 26 years since, substantial changes in production economics, technology and demand require a factual investigation to equalize the fees.
- Accept that the Combined Benefit Fund commitment must be honored, and develop an alternative funding mechanism that does not divert future AML funds to this purpose.
- Adjust the allocation formula to increase allocations to certified states (like Wyoming) while diverting all available excess (including RAMP and some belt tightening at OSM) to historical coal problems. This concept is further discussed below.
- Take AML distributions off budget to avoid the limitations imposed on AML appropriations by the Federal budgeting process. This would provide flexibility to shift increasing amounts to eastern states with the greatest need.
- Reduce restrictions on certified states to address non-coal and infrastructure needs in communities impacted by mining practices. Certified states should have the ability to budget the expenditure of AML funds generated in their states based on priorities established by the State, not the Federal Government.
- The monies previously collected and owed to the states must be paid according to law. Wyoming has been repeatedly advised that OSM cannot pay the states the money owed under the current tax because “the money doesn’t exist.” This position is not only contrary to Federal law requiring the redistribution of the states’ shares, but minimizes the reality that these funds represent reclamation, jobs and public health and welfare in our state. These taxes were real when they were collected and are not a simple accounting item.
- Similarly, Wyoming must receive its share of AML monies going forward. These funds must no longer be subject to convenience or legislative whim. Congress has stated that this problem is significant enough to justify congressional action and a Federal tax. If the problem is indeed this serious, and if we are to main-

tain credibility in addressing it, then the problem is too serious to allow funds collected for the states and owed the states to go unallocated.

ADDRESSING HISTORICAL COAL NEEDS

Wyoming recognizes that Eastern states—Pennsylvania, West Virginia, Kentucky—have substantial remaining historical Priority 1 and 2 coal sites that must be addressed with the proceeds from the reclamation fee. Wyoming believes that a fair and equitable distribution of those funds can satisfy reasonable needs for all states participating in the program established by Title IV of SMCRA. We would suggest the following steps:

- Eliminate the Rural Abandoned Mine Program (RAMP) and dedicate that 10% of future collections to historical coal sites using existing distribution formulas. This reallocation would make an additional \$28 million available annually to distribute for historical coal problems.
- Tighten belts at OSM. OSM has proposed to transfer certain functions such as the Emergency Program to the AML States. A reduction of the OSM share of collections from 20% to 15% would add \$14.4 million annually to the amount available to historic coal states.
- Create an independent funding source for CBF shortfalls. Reducing CBF demands on AML Trust Fund interest could make \$20 million to 30 million available annually.
- Take some portion of AML appropriations off budget. AML distributions to states and tribes have been limited by Office of Management and Budget agency budget ceilings. Current appropriations to all states and tribes have been about \$165 million per year, and it will be difficult to exceed this total amount unless an off-budget compromise is made.

SUMMARY AND CONCLUSIONS

Wyoming has long suffered the severe impacts of fluctuations in the State's extractive mineral-based economy. Wyoming's historical role as a major energy producer for the nation will continue to have negative effects on Wyoming citizens for generations to come. Coal mine subsidence, coal fires, highwalls, pits, bogs, and mine openings will always be a fact of life in Wyoming.

Further, public facilities in mining-impacted Wyoming communities—schools, transportation, water systems, sewage systems, emergency service delivery, medical facilities and other community infrastructure—will continue to suffer from the traditional “boom and bust” economic cycle that is endemic to the natural resource-based economy found not only in Wyoming but also in the eastern states with high historical coal production. Any reduction in AML revenue, especially coupled with the continued burden of the AML tax on the State's coal producers, is an unacceptable combination that will prove detrimental to Wyoming's economy and its citizens. Our state needs, in fact, requires, either relief from the fee or a guarantee that the State will receive an increased share of future AML revenues.

Wyoming respectfully requests that we be included in future discussions regarding AML fund extensions. Wyoming is America's largest coal-producing state and has a long history of coal production to meet the nation's industrial needs. Since the construction of the transcontinental railroad in the early 1860's, and into the foreseeable future, Wyoming will be a vital source of natural resources for our country. We are proud of our role in the economy, industry and environment of the United States, but we cannot forget that, in this issue, our quality of life, safety, environment and health are at stake.

Wyoming thanks the Subcommittee on Energy and Mineral Resources of the House Committee on Resources and its Chairwoman, Barbara Cubin, for the opportunity to present this testimony today.

Mrs. CUBIN. Thank you very much, Mr. Masterson.
I now recognize Murray Balk.

STATEMENT OF MURRAY J. BALK, CHIEF, SURFACE MINING SECTION, KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, ON BEHALF OF THE NATIONAL ASSOCIATION OF ABANDONED MINE LAND PROGRAMS AND THE INTERSTATE MINING COMPACT COMMISSION

Mr. BALK. Good afternoon, Madam Chairwoman. My name is Murray Balk, and I'm the chief of the Surface Mining Section, Kan-

sas Department of Health and Environment. I'm appearing today on behalf of the National Association of Abandoned Mine Land Programs and the Interstate Mining Compact Commission.

All the States and tribes within the association and all the States within the IMCC administer AML programs funded and oversaw by the Office of Surface Mining. I am pleased to appear before the Subcommittee to discuss the future of the Abandoned Mine Land Program. In particular, I would like to address the views of the States regarding the future collections of AML fees, adequate funding for Abandoned Mine Land Programs, and related legislative adjustments to Title IV of SMCRA.

As we draw closer to the September 30, 2004, expiration date, we are beginning to see more proposals on how SMCRA should be amended, if at all. The States through the IMCC, the association, and the Western Governors' Association have recently advanced several proposed amendments to SMCRA. We are looking at only those changes necessary to accomplish several key objectives. These objectives are as follows:

First, to extend fee collection authority for an additional 12 years until September 30, 2016.

To adjust the procedure by which States and tribes receive their annual allocations of monies to address AML problems.

To confirm recent congressional intention to eliminate the Rural Abandoned Mine Land Program and to reallocate those monies to the historic coal production share.

To assure adequate funding for minimum program States.

To address a few other select provisions of Title IV that will enhance the overall effectiveness of the AML Program, including removing incentives, state set-aside programs, handling of liens, and enhancing the ability of States to perform water line projects.

Finally, to address how the accumulated, unappropriated State and tribal share balances in the fund will be handled assuming that the interest in the fund is no longer needed to address shortfalls in the UMW Combined Benefit Fund.

Over the next few months, we must reconcile all the various interests and concerns attendant to the administration of the AML Program in a way that assures the continuing integrity, credibility, and effectiveness of this successful and meaningful program. The States and tribes through their associations welcome the opportunity to work with your Subcommittee and further affected parties to address the issues that attend the future of the AML Program. Our overriding concerns can be summarized as follows:

The first concern would be that adequate and stable funding must be provided to the States and tribes on an annual basis.

Next, the unexpended State share balance in the AML Trust Fund should be distributed to all the States and tribes.

States and tribes until Title IV of SMCRA should remain the primary delivery mechanism for AML monies based on their demonstrated history of effective and efficient program implementation. The States have over 25 years of experience in this area and have demonstrated their expertise and efficiency in running these programs. We, therefore, advocate a continuing significant and meaningful State and tribal lead with regard to both SMCRA and other AML-related programs.

Another concern is funding for the “minimum program” States. It needs to be restored to the statutorily authorized amount of not less than \$2 million annually.

Any adjustment to the AML Program should not inhibit or impair re-mining opportunities or incentives.

The sixth concern we have is that any adjustments to the existing system of priorities under Title IV must consider the impacts to existing State set-aside programs and to current State efforts to remediate acid mine drainage.

The seventh concern is that any adjustments to the current certification process should not inhibit the ability of States to address high-priority non-coal projects.

The eighth concern is that any review or adjustments to the current AML inventory should account for past discrepancies and provide for the inclusion of legitimate new sites.

Finally, any adjustments to Title IV of SMCRA must be presented and considered in a judicious and productive environment that allows for all affected parties’ concerns to be heard and addressed. In this regard, it should be kept in mind that any legislative adjustments which have the result of significantly undermining State AML funding or the capabilities of State AML Programs could lead State legislatures to seriously reconsider SMCRA primacy entirely—both for Title IV and Title V.

Madam Chairman, at this time I would ask that the briefing book prepared by the IMCC and the National Association of Abandoned Mine Land Programs be placed in the record, with your permission.

Mrs. CUBIN. Without objection, so ordered.

[NOTE: The briefing book has been retained in the Committee’s official files.]

Mr. BALK. We appreciate the opportunity to present this testimony today, Madam Chairwoman, and look forward to working with you in the future. I would be happy to answer any questions you have or provide follow-up answers at a later time.

Thank you.

[The prepared statement of Mr. Balk follows:]

Statement of Murray J. Balk, Chief, Surface Mining Section, Kansas Department of Health and Environment, on behalf of The National Association of Abandoned Mine Land Programs and The Interstate Mining Compact Commission

Good morning, Madam Chairwoman. My name is Murray Balk and I am Chief of the Surface Mining Section within the Kansas Department of Health and Environment. I am appearing here today on behalf of the National Association of Abandoned Mine Land Programs (NAAML) and the Interstate Mining Compact Commission (IMCC). The NAAML consists of 30 states and Indian tribes with a history of coal mining and coal mine related hazards. These states and tribes are responsible for 99.5% of the Nation’s coal production. All of the states and tribes within the Association administer AML programs funded and oversights by the Office of Surface Mining (OSM). I am also representing IMCC, an organization of 20 states throughout the country that together produce some 60% of the Nation’s coal as well as important noncoal minerals. Each IMCC member state has active coal mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the remediation of abandoned mines. I am pleased to appear before the Subcommittee to discuss the future of the Abandoned Mine Reclamation Program, which is established under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In particular, I would like to address

the views of the states and tribes under SMCRA regarding the future collection of AML fees from coal producers, adequate funding for our abandoned mine land programs, and related legislative adjustments to Title IV of SMCRA.

Last year, Madam Chairwoman, we celebrated the 25th anniversary of the Surface Mining Control and Reclamation Act. During the past quarter of a century, significant and remarkable work has been accomplished pursuant to the abandoned mine lands program under SMCRA. Much of this work has been documented by the states and tribes and OSM in various publications, especially during the past few years, including the twentieth anniversary report of OSM and a corresponding report by the states and tribes. In addition, OSM's Abandoned Mine Land Inventory System (AMLIS) provides a fairly accurate accounting of the work undertaken by most of the states and tribes over the life of the AML program and an indication of what is left to be done.

My comments today are intended to be representative of where I believe the states and tribes are coming from when we look to the future of the AML program. We strongly feel that the future of the AML program should continue to focus on the underlying principles and priorities upon which SMCRA was founded—protection of the public health and safety, environmental restoration, and economic development in the coalfields of America. Over the past 25 years, tens of thousands of acres of mined land have been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. Based on information maintained by OSM in its Abandoned Mine Land Inventory System (AMLIS), as of September 30, 2002, the states and tribes have obligated 94% of all AML funds received and \$1.7 billion worth of priority 1 and 2 coal-related problems have been reclaimed. Another \$319 million worth of priority 3 problems have been funded or completed (many in conjunction with a priority 1 or 2 project) and \$309 million worth of noncoal problems have been funded or reclaimed.

It should be noted that any monetary figures related to the amount of AML work accomplished to date are based on OSM calculations used for purposes of recording funded and completed AML projects in AMLIS. What they do not reflect, however, is the fact that a significant amount of money is spent by the states and tribes for related project and construction costs that do not find their way into the AMLIS figures based on how those numbers have been traditionally calculated by OSM. These costs (which amount to hundreds of millions of dollars for all states and tribes) include engineering, aerial surveys, realty work, inspections, and equipment—all of which are part of the normal, routine project/construction costs incurred as part of not only AML work, but of any construction-related projects. There is no dispute between OSM and the states and tribes about the legitimacy or nature of these items being a part of the true cost of AML construction projects. In fact, OSM's own Federal Assistance Manual for AML Projects recognizes these costs as "project and related construction costs". As a result, the actual amount of money that has been spent by the states and tribes for construction or project costs is approximately \$2.8 billion—\$2.5 billion of which was for coal projects and \$.3 billion for noncoal projects. Also, of the \$3.3 billion provided to states and tribes in Title IV monies over the years, only \$500 million has been spent on true administrative costs, which reflects a modest average of 15%.

I could provide numerous success stories from around the country where the states' and tribes' AML programs have saved lives and significantly improved the environment. In fact, we presented an overview of several recent AML projects at a Congressional staff briefing that was held in April of this year, and I would like to submit a copy of those materials for the record. Suffice it to say that the AML Trust Fund, and the work of the states and tribes pursuant to the distribution of moneys from the Fund, have played an important role in achieving the goals and objectives set forth by Congress when SMCRA was enacted—including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal mining. OSM will likely provide the Subcommittee with an update from AMLIS which shows our progress to date in addressing these problems. When you review the AML progress report, please remember that the AML program is first and foremost designed to protect public health and safety. Even though accomplishments in the inventory are reported in acreage for the sake of consistency, the bulk of state and tribal AML projects directly correct an AML feature that threatens someone's personal safety or welfare. While state and tribal AML programs do complete significant projects that benefit the environment, the primary focus has been on eliminating health and safety hazards first and the inventory of completed work reflects this fact.

What the inventory also reflects, at least to some degree, is the escalating cost of addressing these problems as they continue to go unattended due to insufficient

appropriations from the Fund for state and tribal AML programs. Unaddressed sites tend to get worse over time, thus increasing reclamation costs. Inflation exacerbates these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. The inventory is also dynamic, which we believe was anticipated from the inception of the program. The states and tribes are finding new high priority problems each year, especially as we see many of our urban areas grow closer to what were formerly rural abandoned minesites. New sites also continually manifest themselves due to time and weather. For instance, new mine subsidence events and landslides will develop and threaten homes, highways and the health and safety of coalfield residents. This underscores the need for continual inventory updates, as well as constant vigilance to protect citizens. In addition, as several states and tribes certify that their abandoned coal mine problems have been corrected, they are authorized to address the myriad health and safety problems that attend abandoned noncoal mines. In the end, the real cost of addressing priority 1 and 2 AML coal problems likely approaches \$6 billion. The cost of remediating all coal-related AML problems, including acid mine drainage (priority 3 sites), could be 5 to 10 times this amount and far exceeds available monies.

A word about the plight of those states that have traditionally been labeled as "minimum program" states due to their minimal coal production and thus minimal AML fee collection: the evolving inventory concerns mentioned previously, as well as the increasing cost of undertaking AML projects, are both exacerbated in these states. Do not be misled by the term "minimum" when we speak of these programs, since many of these states have not been minimally impacted by pre-SMCRA mining. For example, Kansas alone has nearly \$200 million of priority 1 and 2 AML problems that remain unreclaimed. The minimum program states struggle to simply maintain a cost-effective AML program with their most recent annual \$1.5 million allocations, much less undertake AML projects that can approach one million dollars. Without the statutorily authorized amount of \$2 million mandated by Congress in the 1990 amendments to Title IV of SMCRA, these states will continue to be forced to fund or even delay high priority projects over several years. Not only is this dangerous, it is not cost-effective. As your Subcommittee considers amendments to Title IV of SMCRA, we urge you to resolve the dilemma faced by the minimum program states and to provide meaningful and immediate relief.

When considering the economic impacts of potential AML legislation, it should also be kept in mind that, since grants were first awarded to the states and tribes for AML reclamation, over \$3 billion has been infused into the local economies of the coalfields. These are the same economies that have been at least partially depressed by the same abandoned mine land problems that the program is designed to correct. In fact, those dollars spent in economically depressed parts of the country, such as Appalachia, could be considered part of an investment in redevelopment of those regions. The AML program translates into jobs, additional local taxes, and an increase in personal income for the Nation's economy. For each \$1 spent on construction, \$1.23 returns to the Nation's economy. For each \$1 million in construction, 48.7 jobs are created (U.S. Forest Service IMPLAN, 1992 data for non-residential and oil and gas construction). The AML expenditures over the past 24 years have returned over \$4 billion to the economy and have created some 150,000 jobs. While this is significant, much more growth could occur if the entire Fund was used for its intended purposes. For example, it is estimated that \$285 million will be collected from AML receipts in FY 2003. The Administration has proposed to return approximately half of that to the states. However, if the Federal Government returned all \$285 million to the local economies for abandoned mine land re-construction, almost 7,000 additional jobs could be created with an additional \$174 million boost to coal region economies. In this manner, money would be going to work for the communities who are experiencing the consequences of pre-law mining practices as intended by SMCRA.

The ability of the states to accomplish the needed reclamation identified in current inventories is being constrained by the low level of funding for state AML programs. Since the mid-1980's, funding for state AML grants has been declining. In recent years, we have seen the President's budget propose significant reductions for state AML grants, which Congress has ultimately (and thankfully) restored. This year, we have seen a continued attempt to decrease the AML funding level once again—without justification or rational explanation. While we are well aware of the Administration's efforts to reduce the overall budget in order to meet other priorities related to Homeland Security and the War on Terrorism, holding onto AML money that is already statutorily dedicated to provide local improvements to health, safety, the environment, local economies and job opportunities seems to be counter-productive to "homeland security".

The future of the AML Fund and its potential impacts on the economy, public safety, the land, our Nation's waters and the environment will depend upon how we manage the Fund and how we adjust the current provisions of SMCRA concerning the Fund. As we draw closer to the September 30, 2004 expiration date, we are beginning to see more proposals for how the Fund should be handled and how SMCRA should be amended, if at all. The states and tribes, through IMCC, the National Association of Abandoned Mine Land Programs and the Western Governors Association have recently advanced several proposed amendments to SMCRA that are few in number and scope and that reflect a minimalist approach to adjusting the existing language in SMCRA and to incorporate only those changes necessary to accomplish several key objectives. They are as follows:

- To extend fee collection authority for an additional 12 years until September 30, 2016, which should be sufficient to address the majority of high priority coal health and safety problems throughout the country.
- To adjust the procedure by which states and tribes receive their annual allocations of moneys to address AML problems. This has been one of the greatest inhibitions to progress under Title IV of SMCRA in recent years and must be addressed if we are to enhance the ability of the states and tribes to get more work done on the ground within the extended time frame of 12 years. Accordingly, the states and tribes recommend taking their portion of the AML allocation off-budget so that they are able to count on certain, consistent funding from year to year, thereby allowing them to more effectively and efficiently plan and deliver their services.
- To confirm recent Congressional intent to eliminate the Rural Abandoned Mine Program (RAMP) under Title IV and to reallocate those moneys to the historic coal production share. While these moneys would be used primarily to address high priority coal related sites, the states and tribes may coordinate their efforts with the Natural Resources Conservation Service and the local soil and water conservation districts in an attempt to address their concerns as well.
- To assure adequate funding for minimum program (under-funded) states who have consistently received less than their promised share of funding over the past several years, thereby undermining the effectiveness of their AML programs.
- To address a few other select provisions of Title IV that will enhance the overall effectiveness of the AML program, including remining incentives, state set-aside programs, handling of liens, and enhancing the ability of states to undertake water line projects.
- Finally, to address how the accumulated, unappropriated state and tribal share balances in the Fund will be handled assuming that the interest in the Fund is no longer needed to address shortfalls in the UMW Combined Benefit Fund.

Madam Chairwoman, it is obvious from an assessment of the current inventory of priority 1 and 2 sites that there will not be enough money in the AML Trust Fund to address all of these sites before fee collection is set to expire in 2004. It is even more obvious that, regardless of what the unappropriated balance in the Fund is (currently \$1.7 billion) and what future fee collections will add to that balance over the next year, current Congressional appropriations for state and tribal AML program grants are woefully inadequate and are not keeping pace with our ability and desire to address the backlog of old as well as continually developing high priority AML problems. We are therefore faced with a significant challenge over the next few months—and that is to reconcile all of the various interests and concerns attending the administration of the AML program under Title IV of SMCRA in a way that assures the continuing integrity, credibility and effectiveness of this successful and meaningful program under SMCRA.

The states, through their associations, welcome the opportunity to work with your Subcommittee, Madam Chairwoman, and other affected parties to address the myriad issues that attend the future ability of the AML Fund to address the needs of coalfield citizens. Our overriding concerns can be summarized as follows:

- Adequate and stable funding must be provided to the states and tribes on an annual basis that will allow the states and tribes to address the AML problems their citizens are experiencing and to implement their respective AML programs to provide the services intended by SMCRA.
- The unexpended state share balance in the AML Trust Fund should be distributed to all the states and tribes as expeditiously as possible so states and tribes can address existing AML problems before inflationary impacts result in more costly reclamation and thus less reclamation.
- States and tribes under Title IV of SMCRA should remain the primary delivery mechanism for AML moneys based on their demonstrated history of effective and efficient program implementation. In this regard, the states and tribes have

concerns about the proliferation of several recent programs throughout the Federal Government (Bureau of Land Management, National Park Service, Forest Service, Environmental Protection Agency, Bureau of Reclamation, U.S. Army Corps of Engineers, to name a few) that are aimed at addressing abandoned mine lands—at both coal and noncoal sites. While we support additional Federal dollars from all sources that will assist with the clean up of abandoned mined lands, we want to guard against competing programs diluting the overall pool of funds available for service delivery through state and tribal programs. We have worked cooperatively with many of these Federal agencies in the past on AML initiatives and we believe it is critical that we continue to achieve maximum cooperation and coordination, thus assuring efficient use of limited resources. The states and tribes have over 25 years of experience in this area and have demonstrated their expertise and efficiency in running these programs. We therefore advocate a continuing significant and meaningful state/tribal lead with regard to both SMCRA and other AML related programs.

- Funding for the “minimum program” states must be restored to the statutorily authorized amount of not less than \$2 million annually and these states be made whole for past under-allocations.
- Any adjustment to the AML program should not inhibit or impair remaining opportunities or incentives.
- Any adjustments to the existing system of priorities under Title IV must consider the impacts to existing state set-aside programs and to current state efforts to remediate acid mine drainage.
- Any adjustments to the current certification process should not inhibit the ability of the states and tribes to address high priority noncoal projects.
- Any review or adjustments to the current AML inventory should account for past discrepancies and provide for the inclusion of legitimate new sites.
- Any adjustments to Title IV of SMCRA must be presented and considered in a judicious and productive environment that allows for all affected parties’ concerns to be heard and addressed, including coalfield residents who are directly affected by AML dangers and who have been adversely impacted by the unappropriated balance that delays further restoration of their communities. In this regard, it should be kept in mind that any legislative adjustments which have the result of significantly undermining state AML funding or the efficacy of state AML programs could lead state legislatures to seriously reconsider SMCRA primacy entirely—both Title IV and Title V. This very scenario was contemplated by the framers of SMCRA who structured the Act so that the Title IV AML program would serve as an incentive for states to adopt and implement Title V regulatory programs. Should the AML “carrot” be chopped up, the desire to maintain Title V primacy could be seriously re-thought by some state legislatures, particularly during difficult budget times, thus placing OSM in the undesirable position of having to run these programs at a significantly increased cost to the Federal Government.

We appreciate the opportunity to present this testimony today, Madam Chairwoman, and look forward to working with you in the future. I would be happy to answer any questions you may have or to provide follow up answers at a later time.

Mrs. CUBIN. Thank you very much.

I will be brief since the hour is late. I wanted to ask Mr. Masterson a few questions.

Do you have any thoughts on how we can change or does the Governor on how we can change the fee levels for coal that you addressed in your testimony? For example, would a Btu-based assessment be more appropriate, do you think?

Mr. MASTERSON. The evaluation that we have done to this point indicates that we would be interested in—yes, we think a Btu-based tax would be more appropriate. What shape it takes, what rates they take, is something that, you know, remains to be seen. But, in principle, yes, we have no problem with the Btu-based tax.

Mrs. CUBIN. Do you have any thoughts or suggestions about where we can find additional funding for the CBF?

Mr. MASTERSON. I do not. I’m aware that the proposals to bond it are out there. I am aware investments similar to the type of a

railroad retirement fund allowing investments to be made to better—to receive more income and interest off those accounts are out there. I have, candidly, not had the time to examine those, and I am not aware of the bottom line or what significance those would have. I'm sorry.

Mrs. CUBIN. Thank you.

You mentioned that Wyoming has about \$50 million in Priority 1 and Priority 2 sites that is still wanting. Are those new sites?

Mr. MASTERSON. Their sites are constantly reappearing. I'm not sure that they're new insofar as when they were created. I'll give you an example.

Last week, the Department of Environmental Quality received a report about a sinkhole near the town of Hanna. That was a brand-new site that we were not aware of. It turned out that the sinkhole is near a county road underneath a power transmission line, and it appears to be the result of an underground mine, probably 75, 80 years old.

So a number of them have been inventoried, and we do have a list of those sites if you would like me to provide them to you, but there are constantly—there are new sites being added as they appear.

Mrs. CUBIN. Yes, I would appreciate it if you would supply that to the Committee.

How quickly do you think, if you had the \$50 million available, that the sites could be cleaned up? Do you have an estimate?

Mr. MASTERSON. I am advised, Madam Chair, by John Corra, C-o-r-r-a, who's the head of the Wyoming Department of Environmental Quality, that at this time Wyoming is capable of spending approximately \$25 million a year in reclaiming these sites. It's difficult to give an answer, but if I had to give one, that's the figure that we can spend in a year. But, you know, technical problems and the difficulties of reclaiming those sites may prevent other problems. I would imagine—and it's simply a guess—5 to 10 years if the funds were available.

Mrs. CUBIN. Thank you very much.

Mr. MASTERSON. Thank you, ma'am.

Mrs. CUBIN. Mr. Rahall?

Mr. RAHALL. Thank you, Madam Chair. I thank each of the panelists for their testimony here today, and, Cecil, for your very compelling testimony.

As you know and you have stated in both your summary statement and in your detailed submittal for the Committee, we have been focusing on the financial crisis faced by the CBF, and the record is clear Congress established the program. There is a Federal commitment here going back to 1947, as you said. And we have on several occasions passed emergency funding measures for it, and obviously we have a commitment to it. The record is very clear.

So while focusing on the CBF, I kind of, I guess, found that something else crept up on me, and that is all the steel companies that have been going bankrupt, and that has created, of course, a new class of orphan beneficiaries, some 5,000 strong.

I would appreciate it if you would just relay to the Subcommittee the distinction between the CBF and the 1992 plan, whether you

believe Congress has a responsibility to it, and any suggestions you might have for coming up with solutions to the problems.

Mr. ROBERTS. Yes, the Coal Act that was passed in 1992 spoke to two different funds. One we just discussed with respect to the CBF, which has drawn the most attention over the years because of the age of this population. But Congress also spoke with the understanding that some of the people who were made this promise were still working at the time that Congress acted in 1992. So Congress established a cutoff date of October 1st of 1994, about 2 years after the passage of the act, saying that if anyone would retire by that date, they would still be covered by the Coal Act. However, the coal companies had to be the primary provider of that medical care, with the understanding that some of these companies may have already gone out of business or actually could go out of business in the future. And what has happened with respect to a number of steel companies, the most recent one Bethlehem Steel—I have a great interest in that one because my father worked for Beth. Energy all of his life. Well, all of his life he worked at the same company that ended up being owned by Bethlehem Steel. They just recently—there's been something in the headlines—cut off 90,000 beneficiaries' health care to the Steelworkers Union.

What happens if you work for one of these companies and you retired before October 1st of 1994 and they were providing your benefits, if the company happens to go out of business, then you are transferred, if you're a pensioner, over to what is known as the 1992 Benefit Plan. And that is paid for by assessing the coal industry that was signatory to a contract in 1988 or later. What this has done is created quite a burden on those operators, some of which are now in Wyoming, by the way, like Peabody and Arch in particular. They have had to come up with—well, they haven't yet, but they will have to come up with money by about 2005 to help pay for these particular groups of orphans.

That number will be limited because you have to have retired by October 1st of 1994, but as Nick—excuse me, Congressman Rahall has pointed out, there's about 5,000 of these people that have been—will be seeking coverage and are getting coverage from the 1992 benefit. My mom and dad, for example, about 2 months ago they were transferred from Bethlehem's health care over to the 1992 plan. My dad is a World War II veteran, was working in the coal mines in 1946, and before that, his father, who, unfortunately, was killed in a coal mine.

So there is a long history here, and my dad is 87, for example, my mother is 84. So they're right in this class of elderly people, but they fall into the 1992 benefit plan, and we're going to have a funding crisis with respect to that by 2005.

Mrs. CUBIN. I thank the panel for their testimony and for answering the questions, and once again apologize for delaying you for so long. Thank you, Mr. Masterson. I hope I have a chance to visit with you later, but if you have to run, that is fine.

Mr. MASTERSON. I'll be available, Madam Chair, if you would like. Thank you.

Mrs. CUBIN. Thank you.

Mrs. CUBIN. I would like to call the next panel forward, please: Marion Loomis, the Executive Director of the Wyoming Mining

Association; David O. Finkenbinder, Vice President of Congressional Affairs of the National Mining Association; Dave Young, Bituminous Coal Operators Association; and David Laffere of Kansas City Power and Light.

Don't sit down. I would like to swear the panel in.

[Witnesses sworn.]

Mrs. CUBIN. I understand Mr. Laffere has a plane to catch, and since we have delayed you long enough, I would like to recognize you for your testimony first.

**STATEMENT OF DAVID L. LAFFERE,
KANSAS CITY POWER AND LIGHT COMPANY**

Mr. LAFFERE. I do, and I appreciate your efforts to work with me on this.

Good afternoon, Madam Chairwoman and members of the Subcommittee. My name is David L. Laffere. I'm supervisor for Fuel Logistics for Kansas City Power and Light Company, where I'm involved in the planning and purchase of fossil fuels, including coal, for KCPL's electric generating units. I appreciate this opportunity to appear before you this afternoon to discuss the Abandoned Mine Lands Program administered by the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement, or the OSM.

Since my full statement will be made part of the record, I will be brief in my oral remarks and attempt to answer any questions you may have.

Kansas Power and Light is a wholly owned subsidiary of Great Plains Energy. We're on the New York Stock Exchange, and we're headquartered in Kansas City, Missouri. We operate four baseload generating stations that consume roughly 12 million tons of low-sulfur coal each year, and we purchase that coal from your State of Wyoming, Madam Chairwoman.

The reason for KCPL and other utilities that use Powder River Basin coal that we're interested in the reauthorization of the AML Program is because AML fees are embedded costs of each ton of coal that we purchase. The AML fee, therefore, is an inherent cost of electricity that we provide to our residential, commercial, and industrial customers. And to the extent that we can manage our fuel expenses to reduce our costs, we can pass those savings on to our customers.

The AML fee accounts for roughly 5 to 8 percent of our cost of coal that we purchase from Wyoming each year. Last year, we spent roughly \$70 million on coal purchases and \$4 million of that went toward AML fees.

Since the inception of the SMCRA, the cost of coal we purchase for our baseload units has included nearly \$80 million in AML fees. So we care a great deal about the AML program and whether the AML fee system is reauthorized in its present form.

From a national perspective, the AML fee touches millions of households because it contributes to the cost of the energy that we consume. It is an appropriate subject to consider in the context of a national energy policy.

We appreciate your holding this hearing, Madam Chairwoman, and hope that it will lead to a thorough examination of the AML

Program and the AML fees that are imposed on Wyoming coal production. As a utility that takes great pride in its commitment to the environment and offering low-cost and reliable electricity service, we believe this hearing offers a great opportunity for Congress to examine whether the AML fees can be reduced for consumers of coal, especially on production in States where all or most outstanding priority reclamation needs have been addressed, such as in Wyoming. If it can, millions of energy consumers across the Nation will be the beneficiaries.

Thank you.

[The prepared statement of Mr. Laffere follows:]

Statement of David L. Laffere, Kansas City Power & Light Company

Good afternoon Madam Chairwoman and Members of the Subcommittee. My name is David L. Laffere, and I am Supervisor, Fuel Logistics, for the Kansas City Power & Light Company (KCP&L), where I am involved in the planning and purchase of fossil fuels, including coal, for KCP&L's electric generating units. I appreciate the opportunity to appear before you this afternoon to discuss the Abandoned Mine Lands (AML) program administered by the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement, or OSM.

KCP&L is a wholly owned subsidiary of Great Plains Energy, Inc. (NYSE: GXP), headquartered in Kansas City, Missouri. KCP&L generates and supplies power to more than a million residents in a 24-county, 4,600 square mile service area in western Missouri and eastern Kansas. To meet our generation needs, KCP&L relies upon four wholly or partly owned coal-fired generating facilities, which represent approximately 75 percent of our system generation. Collectively, these four plants consume approximately 12 million tons of low-sulfur western coal each year.

The AML program is of considerable interest to KCP&L because abandoned mine land reclamation fees paid into the program are an embedded cost of each ton of coal we purchase and consume and, as a result, inherent in the cost of the electricity we provide to our residential, commercial and industrial customers. The same is true of other fees and assessments imposed by states and the Federal Government, like the black lung fee, a state severance or ad valorem tax, and the Federal coal production royalty itself. All of these levies are part of the overall cost structure of KCP&L's fuel, and each is ultimately borne by our customers.

Of the price we pay for each ton of Powder River Basin coal we purchase, the AML fee accounts for roughly 5 to 8 percent. In 2002, KCP&L spent roughly \$70 million on coal to supply the requirements of our four large base load generating stations, and paid roughly \$4 million in AML fees on that coal. Historically, the cost of coal for these stations has included nearly \$80 million in AML fees since the inception of the AML program.

So, for a small- to medium-sized company that has built its reputation on providing low-cost and reliable electricity service for the last 120 years, the cost to KCP&L of the AML program is an important issue. I suspect, Madam Chairwoman, it is an important issue to virtually every other coal-fired utility, whether large or small, or whether investor-, cooperatively, or publicly owned.

In addition, the AML program is important from an energy and environmental standpoint. Since coal accounts for more than half the electricity generated in this country, public policy affecting coal consumption for energy generation is an important energy issue that could affect the lives of everyone. Because of its abundance and improvements in productivity and emissions control technologies, coal will play an important role in our overall national energy policy for a long time to come.

Madam Chairwoman, we appreciate the fact that your Subcommittee is looking into the AML program, hopefully with an eye toward improving it. The Surface Mining Control and Reclamation Act, or SMCRA, was enacted to address historically unclaimed surface coal mines in existence in 1977 and to ensure that future surface coal mining operations would be fully reclaimed to protect the environment and public safety. In order to fund remediation of past coal mining activity, the Act imposed a fee of \$0.35 per ton of surface mined coal, \$0.15 per ton for underground coal, and \$0.10 per ton for lignite.

At the time of SMCRA's enactment, the majority of coal production and abandoned mine sites were in the east. As a result, AML fees were proportionately distributed on the basis of production and need. In the quarter century since enactment of SMCRA, however, there have been a number of significant achievements

in mined land restoration and remediation. Others better qualified than I can speak to the accomplishments of OSM in administering the Surface Mining Act.

One thing that occurred that Congress may not have foreseen when it passed the Act, Madam Chairwoman, and that we did not foresee was an enormous surge in coal production in the west. There are a number of reasons for this, but there is one conclusion that is inescapable: the Clean Air Act's provisions requiring air quality emissions standards for coal-fired power plants have had a major impact on fuels markets. Signed into law within a week of SMCRA were the Clean Air Act Amendments of 1977. Thirteen years later came the Clear Air Act Amendments of 1990. Together, these two important environmental laws helped spur a dramatic shift in U.S. coal production.

To illustrate the point from KCP&L's perspective: in 1977, our coal-fired generating units consumed 3.7 million tons of Midwestern bituminous coal and only 1.4 million tons of western coal, all surface mined. In 2002, our coal-fired generating fleet consumed only 398,000 tons of Midwestern bituminous coal and 11.7 million tons of western coal. KCP&L's shift in fuel purchases was brought about in part by Federal Clean Air Act rules requiring reductions in emissions of sulfur dioxide. Since switching to Wyoming coal in the late 1980s, KCP&L has grown its electricity generation to meet growing demand, reduced its overall air emissions, and continued to provide low-cost energy for our customers.

Nationally, the trend in coal production has been significant. In 1977, western coal represented 23.5 percent of total U.S. production (164 millions west; 533 tons east). In 2002, western coal represented half of total U.S. production (551 million tons west; 543 million tons east).

A major part of the surge in western coal production came in Wyoming, which is now the largest coal producing state in the country and the source of almost all of our coal. (KCP&L still blends small amounts of locally produced coal with Powder River Basin coal). Overall, western states account for almost two-thirds of the AML fees generated by coal mining, while one-third comes from the east. Wyoming is the largest source of AML fees, accounting for 44 percent of all fees collected. Yet a disproportionately large number of AML priorities remain in the east.

AML fees have helped address the priority coal and non-coal sites in Wyoming, and current bonding requirements now necessitate contemporaneous reclamation of coal-mined lands. Notwithstanding the fact that Wyoming's historic reclamation needs have been addressed and that current reclamation occurs almost in "real time," KCP&L and all other Wyoming coal consumers continue to pay the full \$0.35 AML fee for surface-mined subbituminous coal. We urge Congress to examine this issue because we believe, as do other companies and organizations, that Wyoming's AML collections are disproportionate to its receipts. We understand that Wyoming producers have paid more than \$360 million in AML fees that have not been returned to the state. That means consumers like KCP&L and our electric customers are paying more than we need to for our energy. It also means that other consumers of Wyoming coal are paying more for their energy than they should.

More importantly, however, we believe that the AML fee collected on Wyoming coal has served its purpose. While we appreciate the fact that there is a valid public purpose to be served by applying AML fees to priority reclamation needs—wherever found—we maintain that Wyoming coal consumers like KCP&L and our customers bear a disproportionate part of the fee. In our view, since Wyoming's coal and non-coal reclamation needs have been addressed, we believe Congress should consider whether a reduction in, if not a complete elimination of, the AML fee on Wyoming production is in order.

Since the Department of Energy's Energy Information Administration projects more than 25 percent growth in western coal production and a one-third increase in Powder River Basin production in the coming decade, while production elsewhere will remain relatively flat, we believe it is particularly appropriate for Congress to address the inequities in the AML fee program before the program is reauthorized. We do not believe the current imbalance of benefits and burdens associated with AML fees generated in Wyoming should be perpetuated. We urge the Subcommittee to examine ways to rectify the inequities in the AML fee collection and distribution systems and to develop a more equitable way to address the remaining reclamation priorities under SMCRA.

We would welcome the opportunity to work with the Subcommittee, OSM and others interested parties to address the AML fee in the reauthorizing process, and we thank you for the opportunity to express our views at this hearing. I would be pleased to attempt to answer any questions you may have.

Mrs. CUBIN. Thank you. And please feel free whenever you need to take leave.

Mr. LAFFERE. I appreciate that.

Mrs. CUBIN. Now I would like to recognize Marion Loomis and welcome you to Washington. Good to see you.

**STATEMENT OF MARION LOOMIS, EXECUTIVE DIRECTOR,
WYOMING MINING ASSOCIATION**

Mr. LOOMIS. Thank you, Madam Chairman. It's a pleasure to be here.

Madam Chairman and members of the Committee, I'm Marion Loomis. I'm the Executive Director of the Wyoming Mining Association. As the Nation's largest coal-producing State, I'm pleased to provide this testimony on the reauthorization of the Abandoned Mine Land Fund. I think we provide a unique perspective in that the State of Wyoming has certified that their priority coal reclamation sites have been completed and the fact that we pay a disproportionate and, we feel, unfair share of the AML funds based on volume and percentage of price. We did hear that there may be some additional sites that have been identified in Wyoming, but for the most part, most of the Priority 1 and 2 sites have been addressed.

Since the inception of the Abandoned Mine Land Reclamation Fund in 1977, Wyoming producers have paid \$1.63 billion into the AML Fund. That has already been discussed. In 2002, the 17 active mines paid over \$126 million into the fund but receives only \$28 million. That has also been discussed. It might interest the Committee to know that Wyoming mines now produce over 11 tons of coal per second, 24 hours per day, 365 days a year. And we have the reserves to continue to do that for the next 100 years. So we hope to be a major part of this Nation's energy base for many years to come.

In June of this year, the WMA Board of Directors adopted a Statement of Position on the reauthorization of the AML fee. A copy of that statement is attached for your information, or at least I hope it was. It was mailed in to the Committee.

The position states essentially that we strongly oppose reauthorization of the AML fee unless the following occurs: a fundamental reform of the AML Program, including significant reductions and streamlining of the administrative processes; a significant reduction in the AML fee; and a return of the State share accrued through September 30, 2004, over some defined period of time.

In evaluating the AML Program, it is clearly evident that unless there is a fundamental change in how the program is administered, this program will be a never-ending bottomless pit. Since 1977, the AML has generated over \$6 billion in fees to address about a \$6 billion program. After 25 years, there still remains \$3.5 billion in reclamation work to be done.

We have talked about the administration fees. We think that's a major concern and would hope that if it is reauthorized, that something be done to try to control the administrative costs.

Based on the past history, if nothing is done to rectify the problem, the program would require another \$10 billion to fix a \$3 billion program. We think that's unacceptable.

The OSM has stated that, "Based on historic production records, we know that 94 percent of the AML problems are in the Eastern United States." They also say that 71 percent of those sites are in Pennsylvania, West Virginia, and Kentucky.

Because most of it is based on current production, we feel that there is a corresponding shift of resources away from those States and to Wyoming. OSM has already identified that and discussed it.

I'm trying to paraphrase here as fast as I can, Madam Chairman.

But a great deal of the money has come from Wyoming, and we hope that the AML Program recognizes that the Wyoming coal industry has provided such a huge increase in influx of revenues over the past 25 years. And it's unfortunate that more of the priority coal reclamation projects haven't been addressed.

In general terms, the original intent of the program was that 50 percent of the AML fees were to be returned to the State. That hasn't been done. It's been talked about. But one of the areas we hope that you would take a look at is the fairness issue. And if you look at it as a percentage of sale price, we feel it's patently unfair.

I conducted a survey of our coal membership to quantify the total payments to governments, and the results are in here, and they go through the various taxes. But in 2002, the total taxes paid to Government was \$939 million. The average selling price of coal in 1992 in Wyoming was \$5.90. That represents a 42-percent—those taxes and royalties represent 42 percent of the sales price of Wyoming coal. That does not include any Federal income tax. The AML fee is almost 6 percent of the sales price. If the sales price goes down and is lowered, then it even—it could get up as high as 10 percent.

So we would encourage, Madam Chairman, that something fundamental is done to—if the AML Fund is reauthorized, that there be some fundamental reform, that the price be adjusted. You've talked about Btu, maybe a percentage of the sales price, and we would hope that those monies that are owed to the States, including Wyoming, would be returned.

Thank you, Madam Chairman. You have the full written report, and I'll be glad to try to answer any questions I can.

[The prepared statement of Mr. Loomis follows:]

Statement of Marion Loomis, Wyoming Mining Association

Madam Chairman and members of the Committee my name is Marion Loomis and I am the Executive Director of the Wyoming Mining Association (WMA). As the nation's largest coal-producing state, I am pleased to provide this testimony on the reauthorization of the Abandoned Mine Land Fund. We provide a unique perspective in that the State of Wyoming has certified that their priority coal reclamation sites have been completed, and the fact that we pay a disproportionate, and unfair, share of the AML funds based on volume and percentage of price.

Since the inception of the Abandoned Mine Land Reclamation fund in 1977, Wyoming producers have paid \$1.63 billion into the AML fund. In 2002 alone the 17 active mines paid over \$126 million into the fund, but Wyoming only received \$28 million from the fund. Since inception of the fund, Wyoming has received \$455.8 million dollars or about 28% of the total fees collected from Wyoming producers. It might interest the Committee to know that Wyoming mines now produce over 11 tons of coal per second, 24 hours per day, and 365 days per year. We have the reserves to continue at this rate of production for over 130 years.

In June of this year, the WMA Board of Directors adopted a Statement of Position on the reauthorization of the AML fee. A copy of that Statement is attached for your information. In summary, the WMA's position is that we strongly oppose any reauthorization of the AML fee unless the following occurs:

- A fundamental reform of the AML program, including significant reductions and streamlining of administrative processes.
- A significant reduction in the AML fee.
- A return of the State Share accrued through September 30, 2004 over a defined period of time.

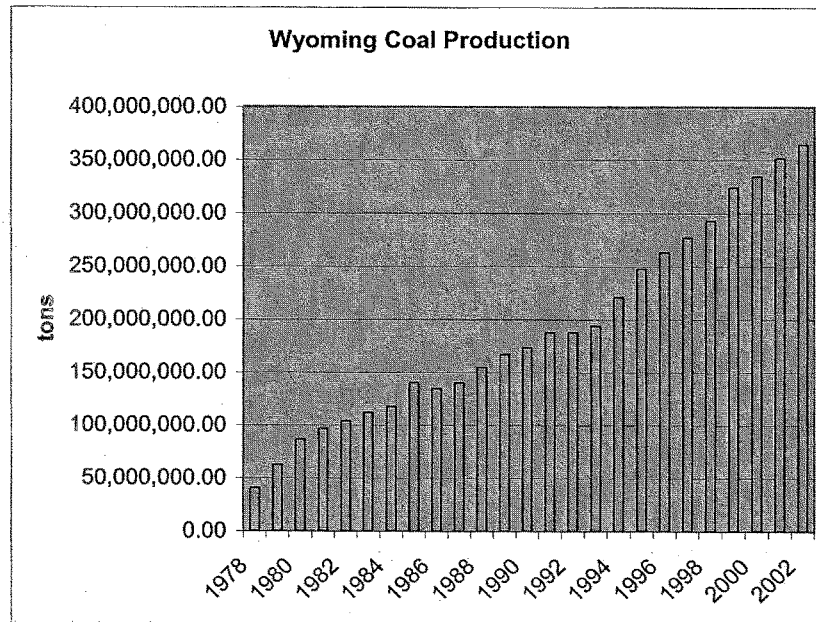
Need For Program Reform

In evaluating the AML program it is clearly evident that unless there is a fundamental change in the how the program is administered, this program will be a never-ending bottomless pit. Since 1977, the AML has generated over \$6 billion in fees to address about a \$6 billion AML problem (Priority 1 and 2 sites). Surprisingly, after more than 25 years, there remains over \$3.5 billion in reclamation work left to do. Only about 36% of the total dollars generated have actually been used to perform reclamation work. Another 25% has gone to administration. The remainder of the fees has either gone to non-priority projects or is being held in trust (\$1.4 billion). Based upon past history, if nothing is done to rectify this problem the program will require another \$10 billion to fix a \$3 billion problem. This is simply unacceptable.

Fees Need To Be Significantly Reduced

OSM has stated that "Based on historic production records we know that 94% of the AML problems are in the eastern United States" [but there has been a] general shift in coal production from the east to the west, and more significantly a shift in the east from surface mine production to deep mine production which is assessed at the lower AML fee of fifteen cents per ton." In fact, OSM notes that nearly 71% (\$2.7 billion) of the remaining estimated AML reclamation costs reside in Pennsylvania, West Virginia and Kentucky. OSM further states, "Over the past 25 years, fee income has shifted away from the areas with high historic production and into the areas where there are fewer or no remaining AML problems. Because 71% of the total grant dollars is based on current production, there has been a corresponding shift of AML resources away from the areas with the most significant AML problems."

OSM has correctly identified that coal production has shifted to surface mines in the west, particularly Wyoming, and to underground mining in the east. This means that based on volume, Wyoming coal producers bear a much greater burden for the AML program than any other coal-producing region, while having little to no reclamation liability. The AML program should be grateful that the Wyoming coal industry has provided such an influx of revenues over the past 25 years. It is unfortunate that more priority coal reclamation projects haven't been addressed.



In general terms, the original intent of the program was that 50% of the AML fees were to be returned to the State of origin to conduct reclamation work. The remaining 50% was to be distributed according to high priority areas. OSM has noted the difficulty they have had being tied to the complex formula that dictates how the remaining (non-state) 50% share is to be distributed. It has also been noted that the 50% State share has not been distributed as well. It is simply an issue of fairness that once a State certifies completion of reclamation work, that the AML fee should be significantly reduced.

Another way to look at the fairness issue is based upon percentage of sales price. I conducted a survey of our coal membership to quantify the total payment to governments. The results are summarized in the following table, and the numbers are simply staggering.

2002 Taxes and Royalties from coal		
	Wyoming Share	Total Paid
Severance Tax	\$ 122,401,374	\$ 122,401,374
Ad Valorem Tax on Production	\$ 101,869,243	\$ 101,869,243
Ad Valorem Tax on Real and Personal Property	\$ 9,901,102	\$ 9,901,102
Federal Mineral Royalty	\$ 147,354,357	\$ 294,708,714
Abandoned Mine Reclamation Fee	\$ 28,700,000	\$ 126,000,000
Bonus Bids	\$ 77,715,076	\$ 155,430,152
Sales Tax	\$ 28,380,099	\$ 28,380,099
Black Lung Tax		\$ 101,009,743
TOTAL	\$ 516,321,251	\$ 939,700,427
Tons	373,128,317	
Taxes and royalties paid per ton	\$ 1.38	2.52

The \$2.52 paid to the state and Federal Government is a huge percentage of the sales price of a ton of coal in Wyoming. In 2002, the average statewide selling price

for a ton of coal was \$5.90, so 42% of the sales price was made up of payments to governments. These numbers do not include any Federal income tax. The AML fee is almost 6% of the sales price, which is significantly higher than any other coal producing state. In some years when coal prices are down, the AML fee can approach 10% of the sales price for some lower Btu PRB coals. In contrast, AML fees on a surface mined ton of coal selling at \$25 per ton (which is common in the Midwest and eastern United States) is only 1.4% (or less if the sales price is higher). The disparity in volume and percentage of sales price is simply not fair, and needs to be rectified. Current law states that the AML fee is \$0.35 per ton of surface mined coal or 10% of sales price. The percentage of sales price could be adjusted so that all surface mined coals (eastern, Midwestern and western) are equalized.

State Shares

WMA supports the State of Wyoming's position to return its State share over a defined period of time. However, we have also heard the discussions that the State of Wyoming would receive their State share balance as of September 30, 2004 over a 10-year period. In exchange, the AML fee would be extended at current rates to some uncertain date in the future. Again, this is an issue of fairness, and this approach is patently unfair. An analogy would be that a bank would say that "we're going to hand out your savings account over the next 10 years; in exchange, you are going to offset your income over the same period of time." Again, we support the State of Wyoming's position to recoup their State share over a defined period of time, but this has to be accompanied by a significant reduction in the AML fee moving into the future.

Summary

As discussed earlier in my testimony, the WMA's position is that we strongly oppose any reauthorization of the AML fee unless there is:

- A fundamental reform of the AML program, including significant reductions and streamlining of administrative processes.
- A significant reduction in the AML fee.
- A return of the State Share accrued through September 30, 2004 over a defined period of time.

Madam Chairman, thank you for the opportunity to present the Wyoming Mining Association's position on this most important topic.

Mrs. CUBIN. Thank you, and it will be entered in the record.

I'm just notified we have 11 votes coming up at about any time. The last time I think we had seven votes that took 2 hours, or six. So we really—if I cut you short, please understand. I just want to get all the testimony in, and your entire testimony will be in the record.

Now I would like to recognize David Finkenbinder with the National Mining Association.

STATEMENT OF DAVID FINKENBINDER, VICE PRESIDENT, CONGRESSIONAL AFFAIRS, NATIONAL MINING ASSOCIATION

Mr. FINKENBINDER. Thank you, Madam Chairman. I intend to make a short statement even shorter right now.

I appreciate the opportunity to testify before the Subcommittee on behalf of the National Mining Association. Since 1998, the coal industry has contributed \$6 million to the AML Fund. There's been about \$2 billion spent for underground coal and non-coal reclamation. The appropriations to the fund have been about \$4.4 million. Essentially about one-third of the appropriated dollars from the AML Fund went to the reclamation of 1 and 2 sites.

In 1986, as a quick history, the National Academy of Sciences did a mid-term report on the situation of the fund, and at that time, most States expressed confidence they would have completed their reclamation of high-priority inventory by 1992 at a cost of \$811 million. By 1992, \$868 million of high-priority sites had been

reclaimed, and the benchmark had been moved up to \$2.3 billion of remaining inventory. In short, every time the reclamation's accomplished, the goal is moved back.

National Mining thinks that there are some issues that need to be addressed in the course of the reauthorization discussions, some considerations that need to be taken into account, I should say.

The questions include: Do we need and can we afford the multiple delivery mechanism and subprograms such as RAMP, the emergency program? And do the provisions—and States still use provisions of law added in 1990 for funds to be set aside in anticipation of the fee expiring in 1995.

Should the current allocation and distribution formula be replaced with a system that directs AML fees to areas with the greatest needs in terms of remaining high-priority? That, of course, begs the question that has been brought: What do we do about the allocation and distribution that is already on the books? Most importantly, it forces us to ask: Does the AML remain a national problem that still requires a national solution? If so, should the solution be administered in a manner more fitting and efficient for a national problem?

Presently, the law sets out no less than five priorities, and there is no requirement that AML fees be used for top priorities. What good are priorities if they're not going to be abided by?

Does the inventory serve as a benchmark for measuring success? As we said, each time the goal is met, the goal line is moved back.

Has the inventory become a funding device used to establish a permanent AML Program rather than a management tool?

And administrative costs, which virtually everyone has talked about, in 1991, there was a GAO report that found that between 1985 and 1990, 28 percent of the \$1.3 billion spent for that period was used for Federal and State administrative expenses.

What should the levels of the fee be? And how much can and should the coal industry be asked to pay into the AML Fund? The job may not be finished, but the lack of AML fees is not the reason. In the 1970's, coal prices were forecasted to be \$50 a ton. In 1982, the average price of coal nationwide, in current terms, was \$27.25. In 2001, the average price of coal was about \$17 a ton. The flat fee—I never should have written that. Every time the coal prices drop, there is a de facto tax increase.

Madam Chairman, thank you again for the opportunity to present NMA's observations on the history of the AML Program. We hope the various considerations will assist you and your colleagues as you address the public policy decisions regarding the coal AML Program.

Thank you very much.

[The prepared statement of Mr. Finkenbinder follows:]

**Statement of David Finkenbinder, Vice President Congressional Affairs,
National Mining Association, on behalf of the National Mining Association**

Madam Chairman, members of the Committee, on behalf of the National Mining Association, I want to express our appreciation for this opportunity to comment on the administration and performance of the Abandoned Mined Land (AML) Program established under the Surface Mining Control and Reclamation Act of 1977.

The AML Program was established with the principal objective to restore unreclaimed lands mined for coal prior to August 3, 1977 that pose threats to the public health and safety. The AML fee paid on each ton of coal produced and sold

to fund the program was authorized initially until 1992, but has been extended twice. With the current authorization scheduled to expire on September 30, 2004, there will undoubtedly be many viewpoints expressed today about the remaining requirements and the need to extend the fee to support those requirements. In this regard, Madam Chairman, we respond to your invitation to testify by providing some observations about the history of the program, and offer various considerations to assist you and your colleagues in making public policy decisions about the program's future.

Revenues and Expenditures

Since 1978, the coal industry has contributed almost \$6 billion to the AML Fund. The Office of Surface Mining (OSM) reports that as of September 30, 2002 about \$1.66 billion of the high priority (Priority 1 & 2) abandoned coal mined lands inventory has been reclaimed. Another \$195 million has been used to reclaim priority 3 coal sites, and \$238 million for non-coal projects. Appropriations from the AML Fund for this period totaled about \$4.4 billion. In other words, less than half of all the money appropriated is finding its way to on-the-ground reclamation of the inventory of coal and non-coal projects. Placed in the context of the high priority coal inventory—the principal mission of the program—about one of every three dollars appropriated from the AML Fund reaches that objective.

Progress and Expectations

In 1986, the National Academy of Sciences (NAS) performed a mid-term review of the AML program. See National Academy of Sciences, *Abandoned Mined Lands: A Mid-Course Review of the National Reclamation Program for Coal* (1986). At that time, the NAS projected that by the expiration of the AML fee in 1992, total revenue for the program would reach about \$3.3 billion. As it turns out, the projection was close to the mark with actual receipts reaching slightly more than \$3.2 billion. NAS also found at that time that most States expressed confidence that they would complete reclamation of their priority 1 and 2 inventory of projects by 1992. *Id.* at 65. It was this confidence that resulted in the States' view that in the meantime they should reclaim lower priorities even before they complete the two top priorities. *Id.* This approach apparently had some merit since as NAS projected all the states, except six, would have enough funds from their state share alone to reclaim priority 1 and 2 projects with an estimated cost of about \$811 million. Moreover, the total state share alone appeared to be adequate to reclaim all priorities at an estimated cost of about \$1.7 billion. *Id.* at 154-55. In short, at the time of the mid-term review of the program more than ample funds appeared to be available to address not only the high priority coal inventory, but the other priorities as well.

By 1992, \$870 million of the high priority coal inventory had been reclaimed. But now the target had moved, and OSM reported that the remaining high priority coal inventory was \$2.6 billion—almost three times the inventory reported in 1986. Since then, it appears that things have actually regressed. Since 1998, it appears that for each dollar of high priority inventory reclaimed, two dollars are added as unfunded high priorities. Now the high priority coal inventory is almost \$3 billion. And, after \$4.4 billion in appropriations from the AML Fund, only \$1.66 billion of the high priority coal inventory has been reclaimed. Continuing business as usual would mean that it will require at least \$9 billion to reclaim the current \$3 billion high priority coal inventory.

Structural Impediments to Success

Twenty five years, two AML fee extensions, and almost \$6 billion later, you will hear that the "job is not finished." You will also hear various viewpoints on why that is the case. We believe the answer largely lies with structural impediments in the current law related to grant formulas, competing program demands that all conspire to thwart cost-effective achievement of the program's principal purpose, and revenue allocation.

The AML Program has been called upon to serve many different demands. It has also been designed to serve those demands through multiple delivery mechanisms. We have Federal programs and State programs. And, within each of those we have special programs, such as the Rural Abandoned Mine Program, Emergency Programs, Appalachian Clean Streams Initiatives, various State Set-Aside Programs, and Technology Development and Transfer Programs. All of these programs compete for funds under various priorities and funding formulas. The first two priorities which comprise the program's core objective relate to restoring abandoned coal mined lands that pose dangers to the public health and safety. There is no overarching requirement that funds be directed toward the high priority coal inventory. Indeed, it appears that these other programs operate as exit ramps to divert funds

away from the high priority inventory. And, all of these programs carry with them extensive Federal and state administrative costs.

According to the OSM white paper, "The Job's Not Finished", around 1989 the demographics of coal production changed and an imbalance developed between fund availability and needs. As a result, the statutory allocation formula for AML revenue precludes the use of a substantial portion of the industry's AML fees for the high priority coal inventory. Half of all fees paid on coal production in a state are earmarked for AML use in that state regardless of the remaining high priority coal AML needs. During the early years of the program, this allocation structure posed little consequence for assuring that AML fees were available for high priority coal inventory. As coal production increased in the West with a relatively smaller coal AML inventory, a larger proportion of AML fee revenue became unavailable for high priority coal projects in other regions with a larger share of the high priority needs. OSM's recent white paper explains the consequences of this imbalance. For the first 15 years of the program, 95% of all state grants were used for high priority coal projects. However, over the past 10 years, only 64% have been used for the program's core objective. And, this percentage will continue to decline absent changes to the law.

Considerations Going Forward

By the time the current fee authorization expires next year, the coal industry will have paid \$6.5 billion in AML fees. Simple math tells us that this sum should have been sufficient to complete both the already reclaimed and current high priority coal inventory with \$2 billion to spare. Will it require \$9 billion—perhaps more—to complete the current high priority coal inventory? The answer will depend upon choices made about whether and how the program is reauthorized. We set forth below several of the questions faced in dealing with the current program structure and requirements. Not surprisingly, each constituency will have different answers and preferences.

1. Multiple Delivery Mechanisms and Programs

Do we need—can we afford—the multiple delivery mechanisms and subprograms that divert funds away from the high priority coal inventory? RAMP is a prime example of this diversion. The program competes with state needs and has not been funded since 1996. Nonetheless, 10% of all AML fees paid annually are still allocated to RAMP which now has \$274 million allocated to that account which cannot be used for other purposes. Emergency Programs also present a duplicative system with some states assuming the responsibility, while 9 states—two of which have the most emergencies—declining to assume that responsibility as part of their approved AML programs. States still use a provision of the law added in 1990 that allows funds to be set-aside in anticipation of the fee expiring in 1995. There is something wrong with the concept of setting aside industry AML fees for future use, and then calling for the industry to keep paying because the job is not yet finished.

2. Fund Allocation and Distribution

Should the current allocation and distribution formula be replaced with a system that directs AML fee revenues to areas with the greatest need in terms of remaining high priority coal inventory? OSM's white paper indicates that the historic production (pre-1977) is a close surrogate for where the high priority coal inventory sites are located. If such a change is made, what happens to the current allocations? States that have completed their high priority coal inventory may feel that they should receive some portion or all of the unexpended balances in their accounts. Distribution of those amounts will affect funding requirements. For example, the unexpended state share for the certified states comprises 30% of the unappropriated AML balance. The allocation and distribution issues present the most fundamental question: Does coal AML remain a national problem that still requires of a national solution? If so, should the solution be administered in a manner more fitting and efficient for a national problem?

3. Adhering to Priorities

What good are priorities if there are so many and there is not an overarching requirement to abide by them? Presently, the law sets out no less than five priorities ranging from the protection of the public health and safety from extreme dangers posed by abandoned coal mined lands to the development of land. There is no requirement that AML fees be used first for the top priority before moving on to lower priorities. In at least two states, the amount of AML fees used to reclaim priority 3 areas either approximate or exceed the amounts spent to reclaim priority 1 and 2 areas. In each case, the amounts spent in these states for priority 3 projects would

have been more than enough to finish their current unreclaimed priority 1 and 2 inventories.

4. The Inventory

Does the high priority coal inventory serve as a benchmark for measuring progress and success? Each time it appears the goal becomes closer, the goal line is moved further away. In 1998, the remaining high priority coal inventory was less than \$2.5 billion. In 1999, the inventory swelled by an additional \$3 billion as a result of a state—which already accounted for one-third of the inventory—moving up lower priorities to the priority 1 and 2 inventory. But even when that inexplicable swelling is removed, the inventory continues to grow by about \$2 for every \$1 dollar of high priority coal reclamation. To some, the inventory has transformed itself from a management tool to a funding gimmick to establish the AML program as a permanent fixture. Some suggest that the inventory should be frozen to avoid this temptation and provide focus and discipline for future expenditures.

5. Administrative Costs

How much do we need to spend in order to spend? A General Accounting Office (GAO) report found that between 1985-1990 \$360 million, or 28%, of the \$1.3 billion spent during that period was used for Federal and State administrative expenses. General Accounting Office, Surface Mining: Management of the Abandoned Mine Land Fund (July 1991). But even this amount may understate the percentage of funds used for administration since, as GAO noted, some States incorporate administrative expenses into their construction grants that are counted as reclamation project costs. As for Federal expenses, GAO reported that during that period OSM spent \$137 million for administration while using about \$100 million for reclamation projects. We are not aware of any single source of information tracking the amount of AML fees used for administration. But piecing together various sources related to AML program performance suggests that over \$1 billion has been spent to administer the program.

6. The AML Fee

What should the levels of the fee be and how much more can or should the coal industry pay into the AML fund? The job may not be finished, but the lack of AML fees is not the reason. In the meantime, the AML fee has become an increasing burden on the industry which has experienced declining prices in the market. While the amount the coal industry receives for each ton of coal it sells has declined precipitously, annual AML fee revenue continues to increase substantially with the rise in coal production. This is because the AML fee rates remain constant for each ton of coal. When the AML fee was being debated in the late 1970s, coal prices were forecasted to exceed \$50/ton, and it was believed that the AML fee would be a nominal tax, at most. In 1982, the average price of coal nationwide in current terms was \$27.25/ton. In 2001, the average price of coal was about \$10 less per ton.

Madame Chairman, thank you again for the opportunity to present NMA's observations on the history of the AML program. We hope the various considerations will assist you and your Subcommittee as you address the public policy decisions regarding the coal AML program.

Mrs. CUBIN. Thank you.

And I now hear the buzzers, but we—"buzzards," I guess I should call them. We do have time to recognize Mr. Young for his testimony.

STATEMENT OF DAVID M. YOUNG, PRESIDENT, BITUMINOUS COAL OPERATORS' ASSOCIATION

Mr. YOUNG. Thank you, Madam Chairman. Good afternoon. I am Dave Young, president of the Bituminous Coal Operators Association. I have submitted my testimony for the record and will summarize it for you as quickly as possible.

I want to express my appreciation to the Committee for conducting this hearing. It gives the BCOA and other interested parties the opportunity to comment on the current operation of the Abandoned Mine Land Program and to make recommendations regarding reauthorization of the AML Program.

We believe the program should be refined so that needed reclamation can be completed and the crucial role of protecting retiree orphan health benefits is maintained.

Congress enacted the Coal Act in 1992, but the Federal Government has a long history of involvement with the coal miners' benefits. When a national coal strike occurred in 1946, President Truman issued an Executive order seizing all bituminous coal mines and ordering the Department of Interior to negotiate appropriate changes in the terms and conditions of employment of the miners. The Secretary of the Department of Interior negotiated a settlement, which ended the strike and created a new benefit fund for coal miners.

One of the congressional findings in enacting the 1992 Coal Act was that "...it is necessary to modify the current private health care benefit plan structure for retirees in the coal...to stabilize plan funding and allow for the provision of health care benefits to such retirees." In passing the Coal Act, Congress sought to stabilize plan funding by limiting benefit eligibility to a specifically identifiable group of approximately 175,000 beneficiaries. That number has since declined to about 100,000.

The Combined Benefit Fund was established to provide benefits to miners who retired before July 20, 1992. Funding for the Combined Fund was based on premiums charged to identified former employers and AML interest for orphan miners whose former employers were no longer in business.

The Coal Act also created the 1992 Fund to provide for orphan retiree health care benefits for employees who retired by September 30, 1994, and who are not eligible for the Combined Benefit Fund. Coal companies are required to pay for benefits of their own employees who retired during this period. However, in the case of a complete bankruptcy, where the company is no longer in business, these retirees become 1992 Fund orphans with no Federally subsidized orphan payment plan. Thus, the long-term financing for the health care is uncertain.

From 1993 through today, this funding system has generally been able to provide the retiree health care benefits to every covered beneficiary, but to do so, Congress has appropriated funds to cover Combined Benefit Fund deficits in several years from reserved interest in the AML Trust Fund.

Today, however, both orphan financing mechanisms are in trouble. This situation has been hastened by the significant steel industry bankruptcies that have moved 10,000 beneficiaries into the orphan category. The current mismatch in orphan financing is expected to require a 40-percent benefit cut in the Combined Benefit Fund and create severe problems in the 1992 Fund. Both the Combined Benefit Fund and the 1992 Fund orphan financing mechanisms must be overhauled if the Coal Act's goal of providing health care benefits to these retirees is to be maintained.

Until recently, the AML interest had been large enough to cover the Combined Benefit orphan expenses. It is important to note that this interest is earned from an almost \$2 billion balance in the AML Fund that was created and is supported solely by coal industry contributions. Between 1996 and 2002, Combined Benefit Fund orphan expenses ranged between \$47 and \$68 million, and AML

interest was generally adequate on an annual basis to cover these expenses. Indeed, as recently as fiscal year 2001, the AML Fund's interest return exceeded \$100 million annually. However, these returns were not the result of an explicit long-term investment strategy. In fact, these returns temporarily masked the lack of any investment strategy by the Department of Interior that should have taken into account the annual minimum needs of the Combined Fund. As interest rates have continued to fall, the Department of Interior's response has been to seek the lowest possible overnight rate of return, which has created a needless and permanent deficit mismatch between the AML interest income and orphan expenses of \$70 million per year.

As the Resource Committee takes up the reauthorization of the AML Program, the BCOA recommends the adoption of the following key measures:

First, the AML Program should be reauthorized and the fee extended in order to complete reclamation work and to adequately fund all Coal Act obligations.

Two, use of the AML interest generated by the AML Trust Fund should be made available to cover expenses of all Coal Act orphan beneficiaries.

Three, Congress should direct the Department of Interior to achieve an investment return sufficient to cover the Combined Benefit Fund and the 1992 Fund needs.

And, last, the \$115 million in stranded AML interest should be made available immediately to offset losses to the Department of Interior's investment policy and to prevent a Combined Benefit Fund benefit cut.

Thank you for this opportunity.

[The prepared statement of Mr. Young follows:]

**Statement of David M. Young, President,
Bituminous Coal Operators' Association**

Good afternoon, my name is Dave Young and I am President of the Bituminous Coal Operators' Association (BCOA). The BCOA represents its members in collective bargaining with the United Mine Workers of America. BCOA is a settlor of various multi-employer Funds including those established by the Coal Industry Retiree Health Benefits Act of 1992 ("Coal Act"). BCOA also represents its members before Congress and the Executive Branch on retiree health and pensions issues and coal mine health and safety.

I want to express my appreciation to the Committee for conducting this hearing. It gives the BCOA and other interested parties the opportunity to comment on the current operation of the Abandoned Mine Land ("AML") Program and to make recommendations regarding reauthorization of the AML Program. Our member companies have a keen interest in the operation of the Program. We believe the Program should be refined so that needed reclamation can be completed and the crucial role in protecting retiree orphan health benefits is maintained.

Congress enacted the Coal Act in 1992, but the Federal Government has a long history of involvement in coal miners' benefits. When a national coal strike occurred in 1946, President Truman issued an Executive Order seizing all bituminous coal mines and ordering the Department of Interior to negotiate "appropriate changes in the terms and conditions of employment" of the miners. The Secretary of the Department of the Interior negotiated a settlement, which ended the strike and created a new benefit fund for coal miners.

One of the Congressional findings in enacting the 1992 Coal Act was "...it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry...to stabilize plan funding and allow for the provision of health care benefits to such retirees." In passing the Coal Act, Congress sought to stabilize plan funding by limiting benefit eligibility to a specifically identifiable group of approximately 175,000 beneficiaries. That number has since declined to about 100,000.

The Combined Benefit Fund (“CBF”) was established to provide benefits to miners who retired before July 20, 1992. Funding for the Combined Benefit Fund was based on premiums charged to identified former employers and AML interest for “orphan” miners whose former employers were no longer in business.

The Coal Act also created the 1992 Fund to provide for “orphan” retiree health care benefits for employees who retired by September 30, 1994 and who are not eligible for the Combined Benefit Fund. Coal companies are required to pay for benefits of their own employees who retired during this period. However in the case of a complete bankruptcy, where the company is no longer in business, these retirees become 1992 Fund “orphans” with no Federally subsidized orphan payment plan. Thus, the long-term financing for the health care is uncertain.

From 1993 through today, this funding system has generally been able to provide the retiree health care benefits to every covered beneficiary but, to do so, Congress has appropriated funds to cover Combined Benefit Fund deficits in several years from reserved interest in the AML Trust Fund.

Today, however, both orphan-financing mechanisms are in trouble. This situation has been hastened by the significant steel industry bankruptcies that have moved 10,000 beneficiaries into the orphan category. The current mismatch in orphan financing is expected to require a 40% benefit cut in the Combined Benefit Fund and create severe problems in the 1992 Fund. Both the Combined Fund and 1992 Fund orphan financing mechanism must be overhauled if the Coal Act’s goal of providing health care benefits to these retirees is to be maintained.

Combined Fund Orphan Expense

Until recently, AML annual interest had been large enough to cover the Combined Benefit Fund’s “orphan” expenses. It is important to note that this interest is earned from an almost \$2 billion balance in the AML Fund that was created and is supported solely by coal industry contributions. Between 1996 and 2002, Combined Benefit Fund orphan expense ranged between \$47 and \$68 million and AML interest was generally adequate on an annual basis to cover these expenses. Indeed as recently as FY-2001, the AML Fund’s interest return exceeded \$100 million annually. However, these returns were not the result of an explicit long-term investment strategy. In fact, these returns temporarily masked the lack of any investment strategy by the Department of the Interior that should have taken into account the annual minimum needs of the Combined Fund. As interest rates have continued to fall, the Department of Interior’s response has been to seek the lowest possible overnight rate of return, which has created a needless and permanent deficit mismatch between AML interest income and orphan expenses of \$70 million per year.

1992 Fund Orphan Expenses

When the Coal Act was debated the funding of the 1992 Fund appeared to be relatively manageable. However, this circumstance has changed dramatically with the recent bankruptcies in the steel industry. LTV, Bethlehem Steel and National Steel each filed for Chapter 7 bankruptcy adding a total of approximately 5,000 orphan beneficiaries in the 1992 Fund. One other major contributor to this Fund is in Chapter 11 and the outcome of that bankruptcy proceeding is uncertain at this time.

Collectively these four companies alone account for 8,500 beneficiaries and \$43 million per year in added expenses to the 1992 Fund, more than doubling the current population (while simultaneously reducing the contribution funding base). No one contemplated at the time of the enactment of the Coal Act that there would be bankruptcies of this magnitude and the dumping of thousands of “orphan” retirees into the 1992 Fund.

This combination of AML Trust Fund investment policies and steel industry bankruptcies has resulted in inequitable burdens and, therefore, requires a fresh approach if Coal Act’s goals are to be maintained. Congress was correct to make AML interest an integral part of the original solution. Reauthorization of the AML Program provides the opportunity to complete the job begun in 1992.

As the Resources Committee takes up reauthorization of the AML Program, the BCOA recommends the adoption of the following key measures:

1. The AML Program should be reauthorized and the fee extended in order to complete reclamation work and to adequately fund all Coal Act obligations.
2. Use of the AML interest generated by the AML Trust Fund should be made available to cover expenses of all Coal Act orphan beneficiaries.
3. Congress should direct the Department of Interior to achieve an investment return sufficient to cover the Combined Benefit Fund and 1992 Fund needs.
4. The \$115 million in “stranded” AML interest should be made available immediately to offset losses due to Department of Interior’s investment policy and to prevent a Combined Benefit Fund benefit cut.

This combination of measures addresses the immediate short-term needs of the Combined Benefit Fund and will provide long-term stability to the Coal Act Funds consistent with the original intent of the Coal Act.

Thank you for this opportunity to testify.

Mrs. CUBIN. Thank you.

I do have questions for members of the panel, but considering the circumstances that I do need to go over to the floor, I will submit those in writing.

Oh, wait a second.

More updates. At any rate, I will submit questions in writing to you. The hearing record will be open for 10 days, and hopefully you will be able to make those responses in that time.

I sincerely thank you for spending your whole afternoon with us, and your testimony has been very valuable. Obviously this is a big job. There are a lot of considerations and more needs than dollars. So we will just do the best we can. I know that we will come out with a product that will meet the fundamental needs that we have.

So since there is no further business in front of the Committee, the Subcommittee is now adjourned.

[Whereupon, at 5:40 p.m., the Subcommittee was adjourned.]

[The following information was submitted for the record:]

- Donnelly, Daniel K., Ph.D., Director, Center for Environmental Research and Education, Duquesne University, Letter submitted for the record
- Grote, Thomas F., Director, Kiski Basin Initiatives, Letter submitted for the record

[A letter submitted for the record by Mr. Donnelly follows:]

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JULY 25, 2003

The Honorable Barbara Cubin
Chair
Subcommittee on Energy and Mineral Resources
1626 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Cubin,

Modification and reauthorization of the Abandoned Mine Reclamation Fund are important to protect our communities and families from hazards posed by coalmines abandoned before 1977. Dangerous shafts, mountains of black waste, polluted waters, and depressed economies afflict one-half of the citizens of the United States. The Abandoned Mine Reclamation Fund is the primary source of money available to fix these problems. We have successfully used the fund to clean up toxic mine water, extinguish mine fires, and eliminate other dangerous abandoned mine hazards.

Unregulated coalmines abandoned before the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) resulted in a legacy of environmental damage. Abandoned mines leak acidic, alkaline, and metal-contaminated water, polluting public water supplies, destroying fish and wildlife habitat, depressing local economies, and threatening human health and safety. Statewide, 44 of Pennsylvania's 67 counties are directly affected by abandoned mines that encompass over 189,000 acres. Abandoned mine drainage (AMD) is the largest contributor to water quality impairment in the Commonwealth. According to the Pennsylvania Department of Environmental Protection, over 3,000 miles of the Commonwealth's streams are impaired by AMD.

The price tag for cleaning up Pennsylvania's abandoned mine legacy has been estimated to be as high as \$15 billion. Pennsylvania has committed substantial state and private dollars and countless hours of professional and volunteer time to addressing the abandoned mine problems. As you know, Congressman Kanjorski has introduced legislation to supplement existing reclamation programs and to further help reclaim our abandoned mine legacy. The Commonwealth receives about \$25 million per year from the Abandoned Mine Reclamation Fund. But the reclamation job before us is too large for any one program or one level of government to address on its own. There is much work left to be done.

Finish the Job

The Abandoned Mine Reclamation Fund program is not currently structured to efficiently and effectively complete the job of reclaiming coal mine lands abandoned before 1977. The states that fueled the coal boom in the early and middle part of this century and helped fight two World Wars currently have low coal production relative to their western counterparts, yet they have the largest legacy of adverse mining impacts from before 1977. The majority of grants distributed to the states are based on current rather than historic production. When the program began in 1977, production in the eastern states was high enough to ensure that our states received a proportion of the funds that roughly aligned with the extent of our problems. Since then, production has shifted away from the states—including Pennsylvania—with high historic production and 94% of the abandoned mine land problems.

OSM Director Jeff Jarrett captured the essence of the problem in a recent white paper entitled *The Job's Not Finished* in which he points out that "there is a direct correlation between a state or tribe's historic production and the magnitude of its AML problem...there is no relationship between the current production state share portion of the grant and the magnitude of the AML problem in that state or tribe."

The formula should be changed to direct resources from the fund to states based upon historic production. This will correct existing imbalances, direct resources to where the problems are, and allow states with the most pre-1977 problems to finish the job of reclaiming our abandoned mine legacy.

Funding for Abandoned Mine Drainage

Abandoned mine drainage pollutes public water supplies, destroys fish and wildlife habitat, depresses local economies, and threatens human health and safety. Pennsylvania is representative of eastern coal states with abandoned mine drainage problems. AMD is our largest source of water quality impairment.

The Pennsylvania Fish and Boat Commission once estimated that the Commonwealth suffers almost \$70 million per year in lost recreational and fishing opportunities due to abandoned mine drainage. These waters are too polluted to allow fishing, boating, and other water-based recreation.

It is critical that abandoned mine drainage problems continue to be eligible for funding to protect the health of our citizens and visitors, improve our economy, and sustain our future.

Keep Priorities 1, 2, and 3

Three priority areas are eligible for funding to correct adverse effects of coal mining practices under Title IV. Priority 1 provides for the protection of public health, safety, general welfare, and property from extreme danger. Priority 2 provides for the protection of public health, safety, and general welfare. Priority 3 provides for the restoration of degraded land and water resources and the environment. States have the discretion to use their allocations from the Fund for projects falling into any of the three priorities.

The current priorities should be maintained, including the ability to fund water-related projects under Priorities 2 and 3.

Maintain the Combined Benefit Fund

Interest generated on the Abandoned Mine Reclamation Fund is currently transferred to the Combined Benefit Fund (CBF) to defray health care costs for retired miners and their dependents whose companies have gone bankrupt or are no longer in business. The CBF pays for health care expenses remaining after Medicare and Medicaid reimbursement and pays for prescription drugs. There are approximately 60,000 beneficiaries, whose average age is 78 years old. This eases the burden on mining companies. If the Abandoned Mine Reclamation Fund is not reauthorized, a new fee will need to be levied to cover these benefits.

The transfer of interest to the Combined Benefit Fund should continue. At the same time, the funds should be invested in a way that maximizes returns whenever possible.

Leverage the Dollars

Currently, most of the resources allocated under this program are not permitted to be matched with other Federal dollars. This is an onerous requirement that inhibits the ability of states to efficiently solve local problems.

Funds allocated under this program should be “matchable” with Federal, state, local, and private dollars to maximize resources and encourage partnerships.

As abandoned mine lands are reclaimed, they offer potential locations for economic development projects. According to the Association of General Contractors, 59 jobs are created for every \$1 million spent on construction activities. By developing and marketing abandoned mine lands that would normally struggle to attract new investment, these “grayfields” can be turned into regional benefits by creating economic opportunities, preventing sprawl, and conserving open space and natural resources. For example, government facilities could be encouraged to locate on these sites rather than on previously undeveloped green spaces.

States should be able to use the funds in ways that promote reclamation, leverage private investment, and, where it is appropriate, encourage redevelopment.

Increase the Minimum Program Funding

States which have significant abandoned mine problems, but which have small state programs, are supposed to be guaranteed minimum funding of their programs by statutory mandate. Since 1990, this funding has been set at \$2 million. In many years, minimum program states have received significantly less. Increasing this amount would help make up for past under-funding and ensure that states with large abandoned mine problems but low production would be able to continue running effective programs. This potentially affects eleven states.

Annual funding for minimum program states should be raised to \$4 million to reduce the time needed to finish addressing their abandoned mine problems.

Full allocation to states of future fees

As of June 30, 2003, the fund has an unappropriated balance of nearly \$1.5 billion. The state share of this balance is almost \$972 million. Pennsylvania maintains the third highest balance at over \$54.7 million. These funds are not being used for their intended purposes while our abandoned mine problems persist.

Future collections to the fund should be fully allocated for their intended purposes of cleaning up abandoned mine problems and reducing the time necessary to meet the goals of SMCRA.

Extend the End Date

The scope of the abandoned mine problem continues to outpace available resources. Based on current funding levels, projected future production, and estimated costs of cleaning up inventoried sites, it will take at least 25 years to address abandoned mine problems. Extending the program 25 years would honor the intentions of the original law to unburden communities plagued by unreclaimed coalmines.

The program should be extended until at least 2029.

Public health and welfare, restoration of the land, and cleaning of polluted streams requires congressional action. Failure to act continues a cycle of depressed economies and unemployment while exposing our communities and families to health and safety hazards. Please act now to modify and reauthorize the Abandoned Mine Reclamation Fund to finish the job of reclaiming our abandoned mine legacy.

RESPECTFULLY SUBMITTED,

DANIEL K. DONNELLY, PH.D., DIRECTOR

CENTER FOR ENVIRONMENTAL RESEARCH AND EDUCATION

[A letter submitted for the record by Mr. Grote follows:]

THOMAS F. GROTE KISKI BASIN INITIATIVES

DIRECTOR 501 15TH STREET, SUITE B

WINDBER, PA 15963

814-467-0836

JULY 29, 2003

The Honorable Barbara Cubin
Chair
Subcommittee on Energy and Mineral Resources
1626 Longworth House
Office Building
Washington, D.C. 20515

Dear Representative Cubin:

Modification and reauthorization of the Abandoned Mine Reclamation Fund are important to protect our communities and families from hazards posed by coal mines abandoned before 1977. Dangerous shafts, mountains of black waste, polluted waters, and depressed economies afflict one-half of the citizens of the United States. The Abandoned Mine Reclamation Fund is the primary source of money available to fix these problems. We have successfully used the fund to clean up toxic mine water, extinguish mine fires, and eliminate other dangerous abandoned mine hazards.

Unregulated coal mines abandoned before the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) resulted in a legacy of environmental damage. Abandoned mines leak acidic, alkaline, and metal-contaminated water, polluting public water supplies, destroying fish and wildlife habitat, depressing local economies, and threatening human health and safety. Statewide, 44 of Pennsylvania's 67 counties are directly affected by abandoned mines that encompass over 189,000 acres. Abandoned mine drainage (AMD) is the largest contributor to water quality impairment in the Commonwealth. According to the Pennsylvania Department of Environmental Protection, over 3,000 miles of the Commonwealth's streams are impaired by AMD.

The price tag for cleaning up Pennsylvania's abandoned mine legacy has been estimated to be as high as \$15 billion. Pennsylvania has committed substantial state and private dollars and countless hours of professional and volunteer time to addressing the abandoned mine problems. As you know, Congressman Kanjorski has introduced legislation to supplement existing reclamation programs and to further help reclaim our abandoned mine legacy. The Commonwealth receives about \$25 million per year from the Abandoned Mine Reclamation Fund. But the reclamation job before us is too large for any one program or one level of government to address on its own. There is much work left to be done.

Finish the Job

The Abandoned Mine Reclamation Fund program is not currently structured to efficiently and effectively complete the job of reclaiming coal mine lands abandoned before 1977. The states that fueled the coal boom in the early and middle part of this century and helped fight two World Wars currently have low coal production relative to their western counterparts, yet they have the largest legacy of adverse mining impacts from before 1977. The majority of grants distributed to the states are based on current rather than historic production. When the program began in 1977, production in the eastern states was high enough to ensure that our states received a proportion of the funds that roughly aligned with the extent of our problems. Since then, production has shifted away from the states—including Pennsyl-

vania—with high historic production and 94% of the abandoned mine land problems.

OSM Director Jeff Jarrett captured the essence of the problem in a recent white paper entitled *The Job's Not Finished* in which he points out that “there is a direct correlation between a state or tribe’s historic production and the magnitude of its AML problem...there is no relationship between the current production state share portion of the grant and the magnitude of the AML problem in that state or tribe.”

The formula should be changed to direct resources from the fund to states based upon historic production. This will correct existing imbalances, direct resources to where the problems are, and allow states with the most pre-1977 problems to finish the job of reclaiming our abandoned mine legacy.

Funding for Abandoned Mine Drainage

Abandoned mine drainage pollutes public water supplies, destroys fish and wildlife habitat, depresses local economies, and threatens human health and safety. Pennsylvania is representative of eastern coal states with abandoned mine drainage problems. AMD is our largest source of water quality impairment.

The Pennsylvania Fish and Boat Commission once estimated that the Commonwealth suffers almost \$70 million per year in lost recreational and fishing opportunities due to abandoned mine drainage. These waters are too polluted to allow fishing, boating, and other water-based recreation.

It is critical that abandoned mine drainage problems continue to be eligible for funding to protect the health of our citizens and visitors, improve our economy, and sustain our future.

Keep Priorities 1, 2, and 3

Three priority areas are eligible for funding to correct adverse effects of coal mining practices under Title IV. Priority 1 provides for the protection of public health, safety, general welfare, and property from extreme danger. Priority 2 provides for the protection of public health, safety, and general welfare. Priority 3 provides for the restoration of degraded land and water resources and the environment. States have the discretion to use their allocations from the Fund for projects falling into any of the three priorities.

The current priorities should be maintained, including the ability to fund water-related projects under Priorities 2 and 3.

Maintain the Combined Benefit Fund

Interest generated on the Abandoned Mine Reclamation Fund is currently transferred to the Combined Benefit Fund (CBF) to defray health care costs for retired miners and their dependents whose companies have gone bankrupt or are no longer in business. The CBF pays for health care expenses remaining after Medicare and Medicaid reimbursement and pays for prescription drugs. There are approximately 60,000 beneficiaries, whose average age is 78 years old. This eases the burden on mining companies. If the Abandoned Mine Reclamation Fund is not reauthorized, a new fee will need to be levied to cover these benefits.

The transfer of interest to the Combined Benefit Fund should continue. At the same time, the funds should be invested in a way that maximizes returns whenever possible.

Leverage the Dollars

Currently, most of the resources allocated under this program are not permitted to be matched with other Federal dollars. This is an onerous requirement that inhibits the ability of states to efficiently solve local problems.

Funds allocated under this program should be “matchable” with Federal, state, local, and private dollars to maximize resources and encourage partnerships.

As abandoned mine lands are reclaimed, they offer potential locations for economic development projects. According to the Association of General Contractors, 59 jobs are created for every \$1 million spent on construction activities. By developing and marketing abandoned mine lands that would normally struggle to attract new investment, these “grayfields” can be turned into regional benefits by creating economic opportunities, preventing sprawl, and conserving open space and natural resources. For example, government facilities could be encouraged to locate on these sites rather than on previously undeveloped green spaces.

States should be able to use the funds in ways that promote reclamation, leverage private investment, and, where it is appropriate, encourage redevelopment.

Increase the Minimum Program Funding

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RESPECTFULLY SUBMITTED,

THOMAS F. GROTE, DIRECTOR

KISKI BASIN INITIATIVES

A statement submitted for the record by the Western Coal Traffic League follows:]

Statement of the Western Coal Traffic League

Madam Chairwoman, Members of the Subcommittee:

This statement is submitted on behalf of the Western Coal Traffic League ("WCTL") to the Subcommittee on Energy and Mineral Resources on the issue of the Abandoned Mine Line ("AML") program. WCTL respectfully requests that this statement be included as part of the Subcommittee hearing record.

IDENTITY AND INTEREST

WCTL is an association formed in 1976. Its membership is composed of electric utilities, located throughout a broad geographic spectrum in the West and Midwest, that purchase and consume coal mined west of the Mississippi River. WCTL members collectively consume more than 130 million tons of western coal annually, the vast majority of which is derived from the enormous, low-sulfur surface mine coal reserves of the Powder River Basin in northeastern Wyoming. A list of WCTL's current members is appended as Attachment 1. The locations of the individual electric utility plants of WCTL's members are displayed and listed on the map appended as Attachment 2.

The AML program is funded from a fee collected on each ton of coal, including \$0.35 per ton produced by surface mining, \$0.15 per ton produced by underground mining, and \$0.10 cents per ton from mined lignite. This fee is imbedded in the price of every ton of coal purchased by coal consumers.

The AML program is of considerable interest to WCTL because the fees paid into the program are passed through by coal suppliers essentially as an added tax to individual electric utilities (who purchase the majority of the nation's coal output) and ultimately to millions of business and residential electric utility customers as part

of their monthly electric bills. Under the AML program, WCTL members collectively pay over \$40 million in AML fees annually.

WCTL'S POSITION ON THE AML PROGRAM

The AML program was enacted over a quarter-of-a-century ago under the Surface Mining Control & Reclamation Act of 1977 ("SMCRA") to address pre-1977 unreclaimed abandoned mine facilities that were no longer assignable to any person for reclamation purposes. Over those 25 years, over \$6.7 billion has been paid into the AML fund that has been passed-through to individual WCTL members and other coal consumers.

Given the large AML expenditures made, the finite number of reclamation sites at issue as established by SMCRA, and the length of time the program has been in effect, one would have hoped that the program would be at or near its end by now. Unfortunately, that does not appear to be the case. While substantial clean-up efforts have occurred under the AML program, by all accounts, significant priority reclamation projects still remain in certain states.

The AML fees paid by electric utility coal consumers are infused with public interest considerations as the fee ultimately has a direct bearing on electricity prices throughout a large portion of the nation. The active surface mines from which WCTL members purchase coal will never tap into the AML fund due to the reclamation and bonding requirements imposed by SMCRA. WCTL members are required to pay the AML fee, state severance taxes, county ad valorem taxes, and "Black Lung" taxes. Well over 30% of the current market mine price of Wyoming Powder River Basin coal is composed of such pass-through taxes and fees.

WCTL recognizes that there may be a legitimate Federal need to continue to address remaining priority coal reclamation problems. At the same time, WCTL and its members have a responsibility to ensure that the program promptly achieves its intended purpose and does not continue in perpetuity.

WCTL addresses below several significant issues in relation to the AML program which it believes the Congress should address as part of any AML reauthorization program.

A. The AML Surplus

The AML's current surplus is over \$1.4 billion, and there is no expected end in the imbalance in receipts versus disbursements that has resulted in this growing surplus. For example, the Office of Surface Mining ("OSM") expects \$380 million in AML receipts and interest collections for Fiscal Year 2004. The House and Senate Appropriations Committees each provide in their annual appropriations bills pending before the Congress less than \$195 million in AML program appropriations for the year—a \$185 million variance. The end result is that almost half of the anticipated fees and interest receipts in the year will be used for purposes other than mine reclamation activities.

B. Regional Production Issues

In enacting the AML program, Congress recognized that based on historic coal production, the crux of the AML problems were centered in the Appalachian region in the eastern United States. As reported by OSM, in the initial years of the AML program, approximately 75% of the AML income was derived from eastern states where 94% of AML problem sites existed, while 25% was from western states where 6% of AML problem sites existed. Thus, the fee receipts from various coal producing regions was roughly proportionate to where the abandoned mine reclamation problems existed.

Congress did not foresee at the time of the enactment of SMCRA the explosion of coal production experienced in the western United States since the early 1980s. As a result of this phenomenon, approximately 36% of AML fees are currently collected from eastern states "where the majority of the remaining AML priority projects exist—and 64% is from western states. Wyoming coal consumers alone contributed approximately 44% of the total AML fees collected in 2002.

In the next decade, the Energy Information Administration expects a 25%+ growth in western coal production (and 34% growth for the Wyoming Powder River Basin coal region), while it expects eastern coal production to essentially remain flat. The end result is that if the AML program continues in its existing form, these regional and state specific issues will be amplified each year well into the future.

C. AML Fee Levels

Under the AML program, surface-mined coal is being assessed \$0.35 per ton—over double and triple that being assessed on underground-mined coal and mined lignite, respectively. This fee structure may have made some sense in 1977, when most of the coal mined in the country was from eastern mines (a large percentage

of which was underground mined coal) as a means of ensuring that the western mines (most of which are surface mines) were able to contribute a roughly proportionate share into the AML fund. However, the appropriateness of imposing a much higher fee on surface mined coal should be reexamined given changes in regional mine production since the enactment of SMCRA.

D. State Share Issues

Under SMCRA, 50% of funds collected annually from any state (or Indian land) are directed to go back to that state (the state share). The remaining fifty percent (the Federal share) is used to complete priority and other reclamation projects, and to pay collection, audit, and administrative costs. However, some western states typically receive AML distributions well-under 30% of the AML fees collected. For example, in 2002 Wyoming, by-far the largest coal producing state, received a total distribution (including Federal and state share) of \$28.7 million—only about 23% of total AML fees collected in the state. The remaining \$34 million due Wyoming under its state share was deposited into the general AML Trust Fund.

In total, almost \$1 billion in state share over-collections is currently deposited in the AML Fund (Wyoming's share alone totals over \$374 million).

E. AML Project Prioritization

Under current law, certain unreclaimed sites may present less urgent public safety or pollution threats, yet under the existing AML rules those project may still qualify for expensive reclamation projects. The program may also unnecessarily promote duplicative bureaucracies in affected states.

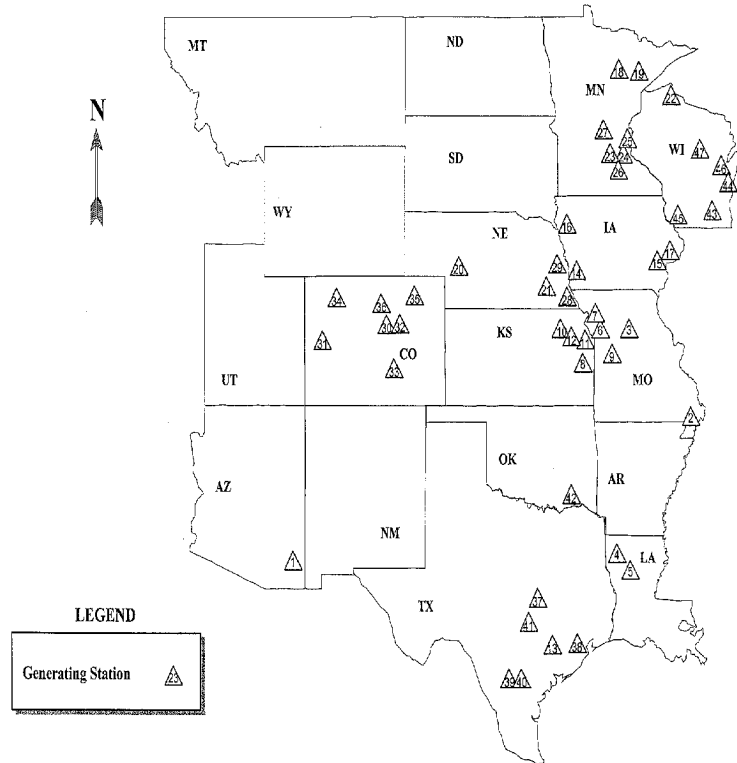
CONCLUSION

Madam Chairwoman, WCTL respectfully submits that the above-issues should be fully evaluated and addressed by the Subcommittee as part of the reauthorization process. WCTL desires to continue to work with the Subcommittee and participate with all interested AML program stakeholders in the AML reauthorization process. We greatly appreciate the opportunity to present our views, and we will be pleased to provide the Subcommittee with any additional information it may desire on any of the matters discussed in this statement.

ATTACHMENT 1

WESTERN COAL TRAFFIC LEAGUE MEMBERS

Alliant Energy
 Arizona Electric Power Cooperative, Inc.
 Associated Electric Cooperative, Inc.
 Center Point Energy
 Central Louisiana Electric Company, Inc.
 City of Austin, Texas
 City Public Service Board of San Antonio
 Kansas City Power & Light Company
 Lower Colorado River Authority
 MidAmerican Energy Company
 Minnesota Power
 Nebraska Public Power District
 NRG Power Marketing Inc.
 Omaha Public Power District
 Texas Municipal Power Agency
 Westar Energy
 Western Farmers Electric Cooperative
 Wisconsin Public Service Corporation
 Xcel Energy

Western Coal Traffic League Coal Burning Generating Stations

Listing of WCTL Coal Burning Generating Stations

Utility (1)	Legend (2)	Plant (3)	Location	
			City (4)	State (5)
1 Arizona Electric Power Coop	1	Apache	Cochise	AZ
2 Associated Electric Coop	2	New Madrid	New Madrid	MO
3 Associated Electric Coop	3	Thomas Hill	Clifton Hill	MO
4 Central Louisiana Electric Coop	4	Dolet Hills	Mansfield	LA
5 Central Louisiana Electric Coop	5	Rodemacher	Lena	LA
6 Kansas City Power & Light	6	Hawthorn	Kansas City	MO
7 Kansas City Power & Light	7	Iatan	Weston	MO
8 Kansas City Power & Light	8	La Cygne	La Cygne	KS
9 Kansas City Power & Light	9	Montrose	Clinton	MO
10 KP&L , Western Resources	10	Jeffrey Energy Center	St. Marys	KS
11 KP&L , Western Resources	11	Lawrence Energy Center	Lawrence	KS
12 KP&L , Western Resources	12	Tecumseh Energy Center	Tecumseh	KS
13 LCRA/City of Austin	13	Fayette	La Grange	TX
14 Mid American Energy	14	Council Bluffs	Council Bluffs	IA
15 Mid American Energy	15	Louisa	Muscatine	IA
16 Mid American Energy	16	Neal	Sioux City	IA
17 Mid American Energy	17	Riverside	Bettendorf	IA
18 Minnesota Power	18	Boswell	Cohasset	MN
19 Minnesota Power	19	Laskin	Aurora	MN
20 Nebraska Public Power District	20	Gentleman	Sutherland	NE
21 Nebraska Public Power District	21	Sheldon	Hallam	NE
22 Northern States Power, Xcel Energy	22	Bay Front	Ashland	WI
23 Northern States Power, Xcel Energy	23	Black Dog	Minneapolis	MN
24 Northern States Power, Xcel Energy	24	High Bridge	St. Paul	MN
25 Northern States Power, Xcel Energy	25	King	Bayport	MN
26 Northern States Power, Xcel Energy	26	Riverside	Minneapolis	MN
27 Northern States Power, Xcel Energy	27	Sherburne	Becker	MN
28 Omaha Public Power District	28	Nebraska City	Nebraska City	NE
29 Omaha Public Power District	29	North Omaha	Omaha	NE
30 PSC of Colorado, Xcel Energy	30	Arapahoe	Denver	CO
31 PSC of Colorado, Xcel Energy	31	Cameo	Palisade	CO
32 PSC of Colorado, Xcel Energy	32	Cherokee	Denver	CO
33 PSC of Colorado, Xcel Energy	33	Comanche	Pueblo	CO
34 PSC of Colorado, Xcel Energy	34	Hayden	Hayden	CO
35 PSC of Colorado, Xcel Energy	35	Pawnee	Brush	CO
36 PSC of Colorado, Xcel Energy	36	Valmont	Boulder	CO
37 Reliant Energy, Center Point Energy	37	Limestone	Jewett	TX
38 Reliant Energy, Center Point Energy	38	W. A. Parrish	Thompsons	TX
39 San Antonio Public Service	39	Deely	San Antonio	TX
40 San Antonio Public Service	40	J. K. Spruce	San Antonio	TX
41 Texas Municipal Power Agency	41	Gibbons Creek	Gibbons Creek	TX
42 Western Farmers Electric Coop	42	Hugo	Ft. Towson	OK
43 Wisconsin Power & Light, Alliant	43	Columbia	Portage	WI
44 Wisconsin Power & Light, Alliant	44	Edgewater	Sheboygan	WI
45 Wisconsin Power & Light, Alliant	45	Nelson Dewey	Cassville	WI
46 Wisconsin Public Service Corp.	46	Pulliam	Green Bay	WI
47 Wisconsin Public Service Corp.	47	Weston	Rothschild	WI

